

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE GLORIA M. NAVARRO  
4 CHIEF UNITED STATES DISTRICT JUDGE

5 UNITED STATES OF AMERICA, :  
6 Plaintiff, :  
7 vs. : No. 2:16-cr-00100-GMN-CWH  
8 JAN ROUVEN FUECHTENER, :  
9 Defendant. :  
10

---

11 TRANSCRIPT OF BENCH TRIAL - DAY 2  
12 (Pages 226 through 454)

13  
14 November 15, 2016

15  
16 Las Vegas, Nevada

17  
18  
19 FTR No. 7D/20161115 @ 9:11 a.m.  
20

21 Transcribed by: Donna Davidson, CCR, RDR, CRR  
22 (775) 329-0132  
23 dodavidson@att.net

24 (Proceedings recorded by electronic sound recording,  
25 transcript produced by mechanical stenography and computer.)

TRANSCRIBED FROM DIGITAL RECORDING

## 1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 Lisa Cartier-Giroux  
5 Elham Roohani  
6 U.S. ATTORNEYS OFFICE  
7 501 Las Vegas Boulevard South  
8 Suite 1100  
9 Las Vegas, Nevada 89101  
10 (702) 388-6336  
11 Lisa.Cartier-Giroux@usdoj.gov  
12 Elham.Roohani@usdoj.gov

9

FOR MR. SANFT:

10

11 Jess R. Marchese  
12 LAW OFFICE OF JESS R. MARCHESE  
13 601 South Las Vegas Boulevard  
14 Las Vegas, Nevada 89101  
15 (702) 385-5377  
16 Fax: (702) 474-4210  
17 marcheselaw@msn.com

14

15 Benjamin C. Durham  
16 BENJAMIN DURHAM LAW FIRM  
17 601 South 10th Street  
18 Las Vegas, Nevada 89101  
19 (702) 631-6111  
20 Fax: (702) 946-1396  
21 bdurham@vegasdefense.com

18

19 Michael W. Sanft  
20 SANFT LAW  
21 324 South 3rd Street  
22 2nd Floor  
23 Las Vegas, Nevada 89101  
24 (702) 382-0905  
25 michael@sanftlaw.com

22

23

24

25

—TRANSCRIBED FROM DIGITAL RECORDING—

1 LAS VEGAS, NEVADA, NOVEMBER 15, 2016, 9:11 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set  
8 for day 2 of the bench trial in Case No.

9 2:16-cr-100-GMN-CWH, United States of America versus Jan  
10 Rouven Fuechtener.

11 Counsel, please make your appearances for the  
12 record.

13 MS. ROOHANI: Good morning, Your Honor. Ellie  
14 Roohani and Lisa Cartier-Giroux for the United States,  
15 joined by our case agent, Special Agent Mari Panovich.

16 THE COURT: Good morning, Special Agent Panovich  
17 and Ms. Cartier-Giroux, Ms. Roohani.

18 MR. MARCHESE: Good morning, Your Honor. Jess  
19 Marchese on behalf of Jan Rouven Fuechtener, along with  
20 Michael Sanft and Benjamin Durham.

21 THE COURT: Good morning, Mr. Sanft and  
22 Mr. Fuechtener, Mr. Durham, Mr. Marchese.

23 Are we ready to begin?

24 MS. ROOHANI: We are, Your Honor.

25 THE COURT: All right. The government can go

—TRANSCRIBED FROM DIGITAL RECORDING—

1 ahead and -- I think we finished the last witness; is that  
2 right?

3 MS. ROOHANI: That's correct, Your Honor.

4 THE COURT: All right. We finished with  
5 forensic examiner Thomas Radke.

6 Go ahead and call your next witness.

7 MS. ROOHANI: Thank you, Your Honor. The United  
8 States calls Kellie Badalucco.

9 COURTROOM ADMINISTRATOR: Please remain standing  
10 and raise your right hand.

11 You do solemnly swear that the testimony you  
12 shall give in the cause now before the Court shall be the  
13 truth, the whole truth, and nothing but the truth, so help  
14 you God?

15 THE WITNESS: I do.

16 COURTROOM ADMINISTRATOR: Thank you. You may be  
17 seated.

18 Please state and spell your full name for the  
19 record.

20 THE WITNESS: Kellie Badalucco. K-e-l-l-i-e  
21 B-a-d-a-l-u-c-c-o.

22 MS. ROOHANI: Kellie, I'm going to ask you to  
23 pull that microphone toward you because I could barely hear  
24 you.

25 THE WITNESS: Okay.

TRANSCRIBED FROM DIGITAL RECORDING

1 MS. ROOHANI: Thank you.

2 KELLIE BADALUCCO

3 called as a witness on behalf of the  
4 Government, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ROOHANI:

7 Q. Who is your employer?

8 A. The Federal Bureau of Investigation.

9 Q. And how long have you been employed with the FBI?

10 A. Nine years.

11 Q. What is your current title?

12 A. Staff operations specialist.

13 Q. And as a staff operations specialist what are your  
14 current duties and responsibilities?

15 A. I provide tactical and analytical support to the  
16 Child Exploitation Task Force.

17 Q. And does that include sending out subpoenas?

18 A. Yeah. I send out subpoenas, I do background  
19 investigation, social media exploitation, review search  
20 warrant returns, things of that nature.

21 Q. And were you involved in the investigation of the  
22 defendant, Jan Fuechtener?

23 A. I was.

24 Q. What was the nature of your involvement in this  
25 investigation? What are some of the things that you did?

TRANSCRIBED FROM DIGITAL RECORDING

1       A.       I was involved in the very beginning when we got the  
2       lead from the Buffalo division. I helped with the  
3       background investigation. I sent out subpoenas. I  
4       reviewed search warrant returns, things like that.

5       Q.       Were you present the day of the execution of the  
6       search warrant?

7       A.       I was.

8       Q.       I'm going to ask you to open up that big binder on  
9       your -- the other one, the other big binder. Thank you.  
10      It says government's exhibit.

11               Can you take a look at Government's Exhibit 20A.  
12      It's under tab 20.

13               And 20A consists of 14 pages. Can you flip  
14      through those 14 pages for me.

15               Do you recognize that document?

16      A.       Yes.

17      Q.       What is it?

18      A.       It's a Skype conversation between larsusa22 and  
19      olwerolwer.

20      Q.       Okay. And where is that Skype chat derived from?

21      A.       Evidence item 1B3.

22      Q.       And how do you know that?

23      A.       It's on the very first page under "Notes."

24      Q.       Okay. Did you review this particular document?

25      A.       I did review this evidence item, the direction of

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Special Agent Panovich.

2 Q. Did you receive this item from Special Agent  
3 Panovich?

4 A. I did.

5 MS. ROOHANI: Your Honor, I would move to admit  
6 Government's Exhibit 20A.

7 THE COURT: Any objection to Exhibit 20A?

8 MR. MARCHESE: No, Your Honor.

9 THE COURT: All right. 20A will be admitted.

10 (Government's Exhibit 20A received.)

11 BY MS. ROOHANI:

12 Q. Okay. Go ahead and take a look at 20B for me. 20B  
13 consists of six pages. Flip through those.

14 Do you recognize this document?

15 A. Yes.

16 Q. How do you recognize this document?

17 A. This is an Excel spreadsheet I made with time  
18 conversions from -- that was derived from Exhibit 20A.

19 Q. Okay. And you created this document yourself?

20 A. Yes.

21 Q. And that was from information derived from 20A?

22 A. Yes.

23 Q. And what were you attempting to do when you created  
24 this document?

25 A. I made time conversions from UTC to Pacific Standard

TRANSCRIBED FROM DIGITAL RECORDING

1 Time.

2 Q. Okay. Go ahead and look at 20C.

3 A. Okay.

4 Q. Do you recognize that document? That's 13 pages?

5 A. Yes.

6 Q. What is that?

7 A. This is the 302 that I wrote from Exhibit 20B that  
8 was the document I wrote into our case file of the Excel  
9 spreadsheet into the 302 that was entered into our case  
10 file.

11 Q. And that particular document memorializes everything  
12 that you did in terms of a work product from 20B; is that  
13 right?

14 A. Yes.

15 Q. Okay. And was this document produced to the  
16 defense?

17 A. Yes.

18 Q. Okay.

19 MS. ROOHANI: Your Honor, the government would  
20 move to admit Government's Exhibit 20B at this time.

21 THE COURT: Any objection to 20B?

22 MR. MARCHESE: No, Your Honor.

23 THE COURT: All right. So 20B will be admitted.  
24 (Government's Exhibit 20B received.)  
25



—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MS. ROOHANI:

2 Q. So we're going to work from 20B. So let's go to 20B  
3 for just a minute.

4 So you mentioned here that you did time  
5 conversions from UTC time to Pacific Standard Time.

6 A. Yes.

7 Q. Where -- what -- I know that they're not labeled at  
8 the top, but can you tell me what the original time was  
9 from 20A, what column that would be in? What is the header  
10 of that column?

11 A. E. Column E. A, B, C, D, E.

12 Q. Okay.

13 A. So it's the message sent date and time in UTC. So  
14 it's the one, two, three, four, fifth column.

15 Q. And the Pacific Standard Time conversion is where?

16 A. F. So it's the next column over, the message sent  
17 date and time, Pacific Standard Time.

18 Q. How did you calculate those conversions?

19 A. I used the Google search engine, and I checked a  
20 number of different sites. I subtracted seven hours from  
21 UTC time to get Pacific Standard Time because these chats  
22 took place in August of 2015, which was not daylight  
23 savings time, so the conversion was a difference of seven  
24 hours.

25 Q. Okay. Let's go ahead and look at 20A. You

—TRANSCRIBED FROM DIGITAL RECORDING—

1 mentioned earlier that these conversations are between a  
2 user named larsusa22 and a user named olwerolwer.

3 Do you remember that testimony?

4 A. Yes.

5 Q. Okay. We're going to go more in depth, but can you  
6 briefly summarize what the nature of these chats are?

7 A. The nature of these chats were the user larsusa22  
8 was going to put a folder on GigaTribe, and when he did so  
9 olwerolwer was going to perform a live sex act on Skype for  
10 the user larsusa22 to watch.

11 Q. Okay. Okay.

12 A. It was going to be an exchange.

13 Q. Okay. And go ahead and look at -- it's Government  
14 Exhibit 20A, and at the bottom right it says 002 as the  
15 page number.

16 Do you see that?

17 A. Yes.

18 Q. Okay. We'll start on that page. And you'll notice  
19 on the left-hand side under "Record," it has a number;  
20 right?

21 A. Yes.

22 Q. And I realize this is very small. And I apologize  
23 for that. Okay?

24 So when I direct you, I'm going to direct you  
25 based on the number that's on the left-hand side of the

TRANSCRIBED FROM DIGITAL RECORDING

1 page, okay? So look at -- what I'm going to call chat  
2 number 308. It's under record 308.

3 A. Okay.

4 Q. Who initiated this particular chat?

5 A. The author was larsusa22.

6 Q. Look at chat number 311 and 312.

7 A. Okay.

8 Q. Actually, I'm sorry. Go back to 308.

9 What did larsusa22 say in 308? What was the  
10 message?

11 A. "Hi. What's up?"

12 Q. Okay. Now, go to 311 and 312.

13 A. Okay.

14 Q. Can you read for us who the author was of 311 and  
15 312?

16 A. The author of 311 and 312 was olwerolwer.

17 Q. Okay. And what did olwerolwer say in 311 and 312?

18 A. "I have a new giga account. Add me on. Olwerman."

19 THE COURT: Can you spell -- I'm sorry. Can you  
20 spell that name, olwer?

21 MS. ROOHANI: Sure. It's o-l-w-e-r. And on  
22 Skype it's o-l-w-e-r o-l-w-e-r twice.

23 THE COURT: Oh, okay.

24 MS. ROOHANI: Yes.

25 THE COURT: Thank you.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   THE WITNESS: And then his name on giga would be  
2                   olwerman, o-w-l-e-r-m-a-n.

3                   THE COURT: Thank you.

4                   THE WITNESS: And then line 312 says, "When can  
5                   I download some stuff from you?" I have a new cam -- "I  
6                   can give you a cam show tomorrow."

7                   BY MS. ROOHANI:

8                   Q.       Okay. And can you read us 313 as well? Who wrote  
9                   313?

10                  A.       313 the author was olwerolwer. "When can you let me  
11                  download some? I know that I can trust you and show you my  
12                  daughter. When" -- sorry. "When you can let me download  
13                  some, I know that I can trust you and show you my daughter  
14                  here."

15                  Q.       Okay. And what did olwerolwer agree to give larsusa  
16                  to download some stuff, based upon the text in 302 -- 312?  
17                  Sorry, excuse me.

18                  A.       He was going to give him a cam show after larsusa22  
19                  would let him download some stuff.

20                  Q.       Okay. Go ahead and look at 320, close to the bottom  
21                  of the page, to 322.

22                  A.       Okay.

23                  Q.       And also take a look at 328, which is on the next  
24                  page.

25                  A.       Okay.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. Who sent the messages in 320, 321, 322, and  
2 328?

3 A. The author of 320, 321, and 322 were larsusa. And  
4 321 states, "When can I watch?"

5 321 states, "Hi."

6 322 states, "Can I watch you fuck?"

7 328, the author was larsusa22, and it says, "Can  
8 I see your cock now?"

9 Q. Okay. Please look on page 003 at record number 337.  
10 Who is the author of this particular message?

11 A. Olwerolwer. And the message states, "and then I can  
12 fuck her for you."

13 Q. Up until this time, who is the only female that has  
14 been referenced in these chats?

15 A. The daughter of olwerolwer.

16 Q. The next page, 355?

17 A. On the next page, 350 -- 355 --

18 Q. Wait. Hold on. Let me make sure. Maybe it's the  
19 same. Some of these numbers are out of order.

20 A. It's on 005.

21 Q. Yes.

22 A. Line 335, the author of it is olwerolwer, and it  
23 says, "She is here. I can fuck her now."

24 Q. And what time is this in Pacific Standard Time? And  
25 you can refer to your creative document 20B, if you need

—TRANSCRIBED FROM DIGITAL RECORDING—

1 to, for 335.

2 A. 355, the Pacific Standard Time is 8:38 a.m.

3 MS. ROOHANI: A moment's indulgence, Your Honor.

4 BY MS. ROOHANI:

5 Q. Look at record number 359.

6 A. Okay.

7 Q. It's on page 005.

8 A. Okay. The author of it is larsusa22, and it says,  
9 "I was sleeping."

10 Q. Okay. And what is the time on that particular  
11 Pacific Standard Time?

12 A. Hang on one second. Sorry. 3 -- the time on that  
13 one was 12:13 p.m.

14 Q. And was that referring to the previous time when  
15 olwerolwer had reached out to larsusa22 and received no  
16 response?

17 A. Right. And that was 8:38 a.m.

18 Q. Okay. Let's look at entry number 387, which I  
19 believe the top of page 007.

20 A. I'm sorry. Which number did you say?

21 Q. 387. Record number 387.

22 A. 387 the author was olwerolwer and said -- he stated,  
23 "Okay, please add my friend on giga, olwer2. When you let  
24 them download, then I fuck her in eight to nine hours for  
25 you."

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And when you sent out a subpoena return, did you  
2 ever determine where olwerolwer lived?

3 A. Yes. Olwerolwer is in Germany.

4 Q. Okay. Let's look at entry number 120. Of course, I  
5 can't tell you what page it's on. It is on the bottom of  
6 page 10.

7 A. Okay.

8 Q. Who wrote this message, and what does this message  
9 say?

10 A. The author for entry 120 is olwerolwer, and it says,  
11 "Your lars45 folder is not online for olwer2 at giga."

12 Q. Now, let's look at number 752, which is on page 13.  
13 Who authored this message, and what did they  
14 say?

15 A. Author 752 is larsusa22, and it says, "When can I  
16 watch you fuck her?"

17 Q. And 775 was the response to that. Who wrote that  
18 message?

19 A. Olwerolwer. And it says, "Hi, I can fuck her in  
20 five hours when she is at my house."

21 Q. Let's look at message number 868, which is on that  
22 same page, a little bit further down.

23 A. The author of 868 is olwerolwer. And it says, "Can  
24 you put up the lars45 folder in the giga folder for my  
25 friend olwer2."

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And 885, which is on the next page?

2 A. The author is olwerolwer, and it says, "Can you put  
3 your lars45 folder in giga?"

4 Q. Okay. And, again, based upon these conversations,  
5 what caused you to conclude that lars45 -- or, I'm sorry,  
6 larsusa22 was going to share his lars45 account for  
7 olwerolwer to view in exchange for a live sex show?

8 A. Because he ends up putting the folder on again. If  
9 you read further down, it leads me to believe that he did  
10 put the folder online.

11 Q. Okay. And where exactly is that?

12 A. On 910 it says -- olwer asks him to please put the  
13 folder in again.

14 And then the next line olwer says, "Thanks."

15 And larsusa responds, "Yes."

16 Q. Okay. And so when you computed these -- the times  
17 in 20 -- from 20A into 20B, did you cross-reference those  
18 times with anything else that was produced to you under a  
19 subpoena return?

20 A. Yeah. We subpoenaed the show times for the new  
21 Illusion show at the Tropicana, to see if any of these  
22 times overlapped with the times that the defendant would be  
23 onstage performing, and none of the times overlapped.

24 And we looked at the times that he would be  
25 getting ready for the show and when he would be talking to



—TRANSCRIBED FROM DIGITAL RECORDING—

1 guests of the show afterwards, and none of the times  
2 overlapped within a couple of hours before the show or a  
3 couple hours afterwards.

4 Q. So in giving him a range of time for before the show  
5 and after the show, what was the closest amount of time  
6 that -- from the time the show's starting, that these chats  
7 happened?

8 A. Approximately three hours.

9 Q. All right. Go ahead and look at Government's  
10 Exhibit 21A.

11 THE COURT: Did you say three hours before or  
12 three hours after?

13 THE WITNESS: Three hours before.

14 THE COURT: Before. Thank you.

15 BY MS. ROOHANI:

16 Q. But there was -- and just to clarify, there was no  
17 overlap of time at any point?

18 A. No.

19 Q. Okay. Go ahead and look at what's been marked as  
20 Government's Exhibit 21A and B. And that's under tab 21.

21 Tell me if you recognize those.

22 A. I do.

23 Q. How?

24 A. These are records that I subpoenaed from Grindr.

25 Q. Okay. And on that first page, what is that first

—TRANSCRIBED FROM DIGITAL RECORDING—

1 page that's on -- that's Bates number 4061?

2 A. This is a Grindr profile ID 54111653. And it is --

3 Q. Hold on one second. Go to the page before 21A.

4 A. Sorry.

5 Q. Tell me what that is.

6 A. This is the custodian of records that certified the  
7 records that were provided to us by Grindr.

8 Q. Okay. And did those certify all the records or  
9 certain attached records?

10 A. The attached records.

11 Q. Okay. And were these -- take a look at 21A and B.  
12 Were those attached to this particular certification?

13 A. Yes.

14 Q. Okay.

15 MS. ROOHANI: And, Your Honor, I would move to  
16 admit these pursuant to the Court's pretrial order.

17 MR. MARCHESE: No objection.

18 THE COURT: What are you referring to? Is this  
19 20C?

20 MS. ROOHANI: 21A and B.

21 THE COURT: Oh. 21A and B. All right.

22 No objection from the defense to 21A and B?

23 MR. SANFT: No, Your Honor.

24 THE COURT: All right. Those will be admitted.

25 (Government's Exhibits 21A and 21B received.)

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MS. ROOHANI:

2 Q. And then go ahead and also take a look at 22A and B.

3 A. Okay.

4 Q. Do you recognize those?

5 A. Yes.

6 Q. Did those also come with the certifications --

7 A. They did.

8 Q. -- as 21A?

9 A. Yes.

10 MS. ROOHANI: Your Honor, I would move to admit  
11 these under the Court's pretrial order.

12 MR. MARCHESE: No objection.

13 THE COURT: And this is 22A and B?

14 MS. ROOHANI: Yes.

15 THE COURT: All right. Those will be admitted.

16 (Government's Exhibits 22A and 22B received.)

17 BY MS. ROOHANI:

18 Q. All right. Now, I'm going to direct your attention  
19 to 21A. We're going to talk about that for a little while.  
20 Okay?

21 A. All right.

22 Q. All right. So you mentioned that the profile --  
23 tell me again what the profile number was that was  
24 associated with 21A?

25 A. 21A is Grindr profile 54111653.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And what was the e-mail account associated with this  
2 particular Grindr account?

3 A. Janrouven@aol.com.

4 Q. And where do you see that?

5 A. It's listed under the e-mail, three lines under the  
6 profile picture.

7 Q. Okay.

8 THE COURT: Can you repeat that again? Who  
9 was --

10 THE WITNESS: Janrouven@aol.com.

11 THE COURT: Okay.

12 BY MS. ROOHANI:

13 Q. And look at page 714. So skipping just a couple of  
14 pages.

15 A. Where do you see the page numbers on here?

16 Q. At the bottom right-hand corner, 00714.

17 A. They're not labeled that way.

18 Q. Is yours not numbered?

19 A. No.

20 Q. It's really tiny on the bottom right-hand side.

21 Let me do this. Let me have -- Marissa, can you  
22 publish page 714.

23 COURTROOM ADMINISTRATOR: And what exhibit is  
24 this?

25 MS. ROOHANI: It's Exhibit 21A. And wait.

TRANSCRIBED FROM DIGITAL RECORDING

1 Before you go on, I just want to clarify.

2 BY MS. ROOHANI:

3 Q. So when you saw -- if you click on that monitor in  
4 front of you?

5 A. Uh-huh.

6 Q. -- in that corner there's a little arrow?

7 A. Yeah. Mine aren't labeled.

8 Q. It's not labeled. Okay. Never mind.

9 Where in -- on this page, where did you see that  
10 janrouven@aol.com?

11 A. (Inaudible.)

12 Q. Okay.

13 All right. Marissa can you go to 714, please.

14 Okay. Do you recognize this person?

15 A. Yes. Yes.

16 Q. Who is that?

17 A. The defendant, Mr. Fuechtener.

18 Q. And is this a photo that's associated with the  
19 profile 540111653?

20 A. Yes.

21 MS. ROOHANI: Can you go to 716, Marissa? And  
22 also 717, just for her to be able to see it. Okay.

23 BY MS. ROOHANI:

24 Q. Do you recognize the person photographed in these  
25 two photos?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       Yes.   That appears to be part of the body of the  
2 defendant.

3       Q.       And how do you recognize that as being the body of  
4 the defendant?

5       A.       It appears to be part of the jawline and the abs of  
6 the defendant.

7       Q.       And is 717 and 716, do they seem to be the same  
8 photo but cropped?

9       A.       Yes.

10      Q.       All right.  Let's go to the chats associated with  
11 the profile which is in 21B.

12      A.       Okay.

13      Q.       And this is going to be impossible to do if you  
14 don't have these page numbers.

15               So, Marissa, you're going to have to do that  
16 too.

17      A.       These ones are labeled.

18      Q.       Oh, these ones are numbered.  Excellent.

19      A.       Just the profiles aren't labeled in mine.

20      Q.       Can we go to page 002.

21      A.       Okay.

22      Q.       And because these are not numbered like the Skype  
23 chats, I'm going to refer to the timestamp.

24      A.       Okay.

25      Q.       The first thing I want to ask you is do these

—TRANSCRIBED FROM DIGITAL RECORDING—

1 timestamps indicate whether they're in Pacific Standard  
2 Time, UTC time, Eastern Time, or any other?

3 A. No, it's not indicated.

4 Q. Okay. And was there any information given to you by  
5 Grindr that would differentiate what time zone that was  
6 from?

7 A. Grindr did not indicate what time zone they were  
8 given in.

9 Q. Okay. All right. So let's look at timestamp on  
10 page on 2, 18:39:59?

11 A. Okay.

12 Q. Who sent that message?

13 A. This one was sent by profile 54111653.

14 Q. And just for clarity, we're just going to refer to  
15 that as the 541 profile. Okay?

16 A. Okay.

17 Q. All right. So the 541 profile, what does that  
18 particular message read?

19 A. "I send it from my other profile. I am Lars."

20 Q. Go to the next page, 003. Timestamp 53:31.

21 A. Okay.

22 Q. Who sent that message?

23 A. 541115 -- or 653.

24 Q. Okay. And what did that message read?

25 A. "Family taboo stuff, yng."

TRANSCRIBED FROM DIGITAL RECORDING

- 1 Q. Okay. And on the message above it, can you read  
2 exact -- just the message above it?
- 3 A. "What do you call pervy and kinky in your man?"
- 4 Q. Same page, timestamp 55:05.
- 5 A. "Brothers having sex."
- 6 Q. And was that sent by profile number 541?
- 7 A. Yes.
- 8 Q. Let's go to page 5. This is timestamped 17:35:24.
- 9 A. Okay.
- 10 Q. And was that sent by profile number 541?
- 11 A. Yes.
- 12 Q. What does that read?
- 13 A. "Have them on my other account."
- 14 Q. And reading just a couple lines above, what is that  
15 referring to?
- 16 A. What was your question again? Can you repeat it?
- 17 Q. Yes. So when he says, "I have them on my other  
18 account," what is that referring to, based upon the  
19 previous little bit of the conversation? Maybe I could  
20 refer your attention to 17:34:59.
- 21 A. Send then a dick pic. "Send me a dick pic tho."
- 22 Q. All right. Same page, 17:57:29.
- 23 A. "On two other accounts."
- 24 Q. Was that sent by 541?
- 25 A. Yes.



TRANSCRIBED FROM DIGITAL RECORDING

- 1 Q. Go to page 7. Direct your attention to two  
2 different timestamps, 5:35:26?
- 3 A. Okay.
- 4 Q. And the one right after that, 5:35:35.
- 5 A. "I send them from my other profile."  
6 "Lars here."
- 7 Q. And was that sent by user profile 541?
- 8 A. Yes.
- 9 Q. Next page, 008. And this is a range, 9:25:38 to  
10 9:25:58. There's about four in there.
- 11 A. Can you say this one more time?
- 12 Q. Sure. Let's start with 935 --
- 13 A. 935?
- 14 Q. Sorry, 9:25:38.
- 15 A. All right.
- 16 Q. 541 sent that particular message?
- 17 A. Yes.
- 18 Q. And what did that person ask?
- 19 A. "Where are you?"
- 20 Q. And what did the user respond with?
- 21 A. "Tropicana."
- 22 Q. And then?
- 23 A. He asked "You?"
- 24 Q. And 541 responded and said what?
- 25 A. "Too," smiley face.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 "Shall I come to your room?"

2 And the other person responded, "Own room?"

3 To which profile 541 responded, "No."

4 And then he asked, "You?"

5 The other person responded, "I have a roommate  
6 tonight."

7 And he asked "What are you into, Perv?"

8 "Very few limits here."

9 Q. And 541 responded what?

10 A. "Taboo, family, brothers, brothers, brothers,  
11 sisters, yng. You?"

12 Q. Okay. I'm going to have you pause there for a  
13 moment.

14 And who sent the message that says "yng"?

15 A. Profile 54111653.

16 Q. Okay. Let's look at the next page. Starting at  
17 9:32:47.

18 First of all, did 541 send this particular  
19 message?

20 A. 9:32:47?

21 Q. Yes.

22 A. It was sent by the other user.

23 Q. What did that other user say?

24 A. "Used to play with a few boys."

25 Q. And what did profile --

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE COURT: I can't hear anything you're saying.  
2 Do you supply what?

3 THE WITNESS: "Used to play with a few boys."

4 THE COURT: You supplied 50 boys?

5 THE WITNESS: He used to play with a few boys.

6 THE COURT: Oh, "Used to play with a few boys"?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 MS. ROOHANI: Your Honor, would it be easier if  
10 I asked Marissa to publish it so you could read along with  
11 these chats?

12 THE COURT: Yes. Well I don't know how tiny  
13 it's going to be. If I could see it, that would be great.

14 MS. ROOHANI: This one is a little more  
15 readable.

16 THE COURT: Okay.

17 MS. ROOHANI: Marissa, can you publish 21B, page  
18 009.

19 BY MS. ROOHANI:

20 Q. Okay. And, Kellie, I'm going to have you mark again  
21 where we're starting. It's 9:32:47, on that line.

22 So the other user said, "Used to play with a few  
23 boys." That's where we're starting.

24 UNIDENTIFIED SPEAKER: (Inaudible).

25 MS. ROOHANI: That's okay.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE COURT: That's okay.

2 BY MS. ROOHANI:

3 Q. What did 541 respond with?

4 A. "Where did you find them?"

5 Q. And what did the other user reply to that?

6 A. "Baby-sat for them."

7 Q. Okay. And what did 541 say to that?

8 A. "Hot, wow, you think we could pull something off  
9 together?"

10 Q. And what did the other person respond with?

11 A. Be hot -- have to -- "Be hot to have fucking me as  
12 we watch some taboo poem."

13 Q. And based upon the context of this conversation,  
14 were they talking about poems?

15 A. No.

16 Q. What were they talking about?

17 A. That was a typo for porn.

18 Q. Okay. One moment so I can find my place.

19 Who sent the message that says, "Do you think we  
20 can pull something off together?"

21 A. User 54111653.

22 Q. Okay. Let's go to page 11.

23 THE COURT: When you say this is a typo, is this  
24 your typo, or is this from Grindr? I thought this was  
25 something she created.

TRANSCRIBED FROM DIGITAL RECORDING

1 MS. ROOHANI: No, no, this --

2 THE WITNESS: That was on the Skype time  
3 conversion. This is directly from Grindr.

4 THE COURT: Okay. Thank you.

5 BY MS. ROOHANI:

6 Q. Okay. So when you say this is a typo, that is your  
7 belief that this is a typo?

8 A. That's my belief that this is a typo. Grindr is a  
9 mobile application. So it could be just an auto  
10 correction.

11 THE COURT: Yeah.

12 BY MS. ROOHANI:

13 Q. And there was nothing in this conversation that  
14 indicated they were talking about poems?

15 A. No.

16 Q. Okay. Let's go to 11, please. Let's start at  
17 timestamp 52:23, which --

18 A. 52 --

19 Q. 52:23. Right there. Who sent that particular  
20 message?

21 A. I'm sorry. Could you say it one more time?

22 Q. Sure. 52:23. It's also marked on there.

23 A. Okay.

24 Q. Marked on the screen.

25 A. Okay.

TRANSCRIBED FROM DIGITAL RECORDING

- 1 Q. Who sent that particular message?
- 2 A. User 54111653.
- 3 Q. And what did that user say?
- 4 A. "Shall we drug a young?"
- 5 Q. And then two lines down what did the other user
- 6 respond with?
- 7 A. "Fuck yes."
- 8 Q. Page 12, please. Timestamp 3:00:30. Who sent that
- 9 message?
- 10 A. User 54111653.
- 11 Q. And what did that message say?
- 12 A. "Into yng?"
- 13 Q. Same page, 23:02. Who sent that message?
- 14 A. Same user, 54111653.
- 15 Q. And what was the question before that, before that
- 16 particular line?
- 17 A. The other user asked what he was into.
- 18 Q. And what did 541 respond with?
- 19 A. "Taboo stuff, yng and family."
- 20 Q. Same page, 23:07:00. Who sent that message?
- 21 A. The other user.
- 22 Q. And what did that user ask?
- 23 A. "What ages do you like?"
- 24 Q. And what did user 541 respond with?
- 25 A. "13 through 11. You?"

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. And what did the other user respond to that  
2 response?

3 A. "Young legal."

4 THE COURT: Did you say "13 through 11"?

5 THE WITNESS: "13 through 16." Sorry.

6 "You."

7 BY MS. ROOHANI:

8 Q. Okay. Page 13, timestamp 13:33:14, who sent that  
9 message?

10 A. User 54111653.

11 Q. And what does that message read?

12 A. "It's Jan," smiley face.

13 Q. And what's the next message say?

14 A. "Got a new Grindr lol."

15 Q. And next one?

16 A. "And put a generic body lol."

17 Q. Okay. Now we're going to move on to Government's  
18 Exhibit 22A.

19 What is the user number associated with this  
20 particular account?

21 A. 2002810.

22 Q. And what is the e-mail associated with that account?

23 A. Larsschmidt22@hotmail.com.

24 Q. Okay. And I'm going to circle it for you. But you  
25 tell me, did you get that from there?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes.

2 Q. Okay.

3 730, please.

4 Do you recognize that photo?

5 A. Yes.

6 Q. How do you recognize that photo?

7 A. It's one of the same photos that was used on the  
8 last Grindr profile.

9 Q. And was that the body of the defendant as you had  
10 indicated before?

11 A. Yes.

12 Q. Okay. Let's look at some of the chats, which is in  
13 22B, specifically page 5. I'm looking at timestamp 22:55.

14 So in this one, who sent this message?

15 A. Another user, 63879241.

16 Q. Oh, I'm sorry. There's a bunch of 22:55s. Let's do  
17 22:55:30.

18 A. Okay. It was sent by 2002810.

19 Q. And that was the owner of this particular Grindr  
20 account?

21 A. Yes.

22 Q. And then what did that message say?

23 A. "No, that's where I live."

24 Q. What did the other user respond with?

25 A. "Oh, okay. Didn't know where you lived."



TRANSCRIBED FROM DIGITAL RECORDING

1 Q. And then?

2 A. "What is the area called?"

3 Q. And what did user 2002 respond to that?

4 A. "Centennial."

5 Q. Are you familiar with where 7080 Donald Nelson is  
6 located?

7 A. Yes.

8 Q. Is that located in an area of town known as  
9 Centennial?

10 A. Yes.

11 Q. And was that message sent by the user 2002?

12 A. Yes.

13 Q. On page 6, please. Let me direct your attention to  
14 timestamp 8:14:20.

15 A. Okay.

16 Q. Who sent that particular message?

17 A. 63879241.

18 Q. So not the user of this account?

19 A. No.

20 Q. And what did that message say?

21 A. "Babe, you're way out there. You were just at  
22 Tropicana. What were you there for? Could have gotten us  
23 a room around there."

24 Q. And what did 2002 respond?

25 A. "Work there."

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Where does the defendant work?

2 A. He worked at the Tropicana.

3 Q. Page 7, please. Look at timestamp 10:13:58.

4 A. Okay. It was sent by user 2002810.

5 Q. And what did that person say?

6 A. "Lars."

7 Q. Was that in response to any question?

8 A. No.

9 Q. And what did the other user respond with?

10 A. "Lars?"

11 Q. And jump down next to. Actually read me the next  
12 couple of messages.

13 A. The user 63879241, "What is Lars? Why don't you  
14 have a boyfriend? Not suggesting anything. Just  
15 wondering."

16 Q. And then at 10:31:02, what did that same user  
17 respond?

18 A. "No what, what is Lars?"

19 Q. Who sent that first message saying "Lars"?

20 A. Profile 2002810.

21 Q. Okay. All right. Let's go ahead and take a look at  
22 Government's Exhibit 23.

23 It's not been admitted yet. So don't publish.

24 Okay. I want you to take a look at

25 Government's -- first the page before Exhibit 23A, and then

—TRANSCRIBED FROM DIGITAL RECORDING—

1 I want you to look at 23A, B, C, D, E, and F. And tell me  
2 if you recognize those.

3 A. Yes.

4 Q. Okay. Let's talk about that very first page before  
5 Exhibit 23A. What is that?

6 A. It's a business record certification.

7 Q. And who is that from?

8 A. Microsoft.

9 Q. Did you request that from Hotmail.com?

10 A. Yes.

11 Q. Okay. Let's talk about 23A, B, C, D, E, and F.

12 Were these documents derived from a subpoena or  
13 a search warrant sent to Hotmail.com?

14 A. Yes.

15 Q. And these documents came with a business  
16 certification that we've already talked about?

17 A. Yes.

18 MS. ROOHANI: Your Honor, I would move to admit  
19 these under the Court's pretrial order.

20 MR. MARCHESE: No objection.

21 THE COURT: Is this 23A through F and not E, or  
22 does it include E?

23 MS. ROOHANI: There is no -- oh, all of them.  
24 Up to F. E and F. I'm sorry if I didn't say E.

25 THE COURT: Yeah. That's what I was wondering,

—TRANSCRIBED FROM DIGITAL RECORDING—

1 maybe that one came in later.

2 MS. ROOHANI: A through F. All of them.

3 THE COURT: A through F?

4 MS. ROOHANI: Yes.

5 THE COURT: Any objection from the defense?

6 MR. MARCHESE: No, Your Honor.

7 THE COURT: All right. So 23A through F will be  
8 admitted.

9 (Government's Exhibits 23A, 23B, 23C, 23D,  
10 23E, 23F received.)

11 BY MS. ROOHANI:

12 Q. Let's talk about 23A. Okay? Who is this e-mail  
13 from?

14 A. This e-mail is from GigaTribe.

15 Q. And who is this e-mail to?

16 A. It's addressed to larsschmidt22@hotmail.com.

17 Q. And can you read me the body of the e-mail?

18 A. The body of the e-mail says:

19 Dear lars45, your bank has declined the  
20 payment of your GigaTribe monthly subscription.

21 The most common reasons for a declined payment are  
22 card expiration or the reach of your credit limit.

23 Your ultimate license will automatically -- will  
24 end automatically on 25/04/21. If you wish to keep  
25 using GigaTribe ultimate license, you may subscribe

—TRANSCRIBED FROM DIGITAL RECORDING—

1           again on the following page.

2                   It gives a link to GigaTribe ultimate. Best  
3 regards GigaTribe.

4                   MS. ROOHANI: And, Marissa, I'm going to ask  
5 that you publish 23A, please.

6 BY MS. ROOHANI:

7       Q.       What is -- well, when it comes up. What is the date  
8 on this particular e-mail?

9       A.       The date on it is April 14, 2015, at 6:06 p.m.

10      Q.       All right. Let's look at 23B, page 001.

11                   Marissa, you can publish.

12                   Who is the -- and this is an e-mail chain; is  
13 that correct?

14      A.       Yes.

15      Q.       Okay. Who is that last e-mail from?

16      A.       The e-mail is from larsschmidt22@hotmail.com.

17      Q.       And who is it to?

18      A.       It's to willrose239@Yahoo.com.

19      Q.       And what is the date on this particular e-mail?

20      A.       April 14th, 2002. Or 2012. Sorry.

21      Q.       Okay. Can you read just that last e-mail in the  
22 chain?

23      A.       "Yes, please send me some pics to 702-994-3700.

24      Q.       Do you know whose phone number 702-994-3700 is?

25      A.       Yes, it's the defendant's phone number.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And how do you know that?

2 A. It came back in a subpoena return that we sent to  
3 Verizon Wireless.

4 Q. Let's look at page 002. This is an e-mail chain.  
5 And I understand that it's a little bit difficult to read.  
6 So bear with me.

7 How many e-mails are in this chain? More than  
8 one?

9 A. Looks like four.

10 Q. And who are the two parties in this e-mail? Who are  
11 the two e-mail addresses being exchanged between?

12 A. Larsschmidt22@hotmail.com and  
13 homeforrent515@gmail.com.

14 Q. And what is the date on the latest e-mail?

15 A. October 25th, '12.

16 Q. I want you to take a look at that first e-mail in  
17 the chain. Who was it originally signed by?

18 A. Lars.

19 Q. And in the last e-mail in the chain, who was it  
20 signed by?

21 A. Jan.

22 Q. And were they both sent by larsschmidt22@gmail.com  
23 -- or @hotmail.com?

24 A. Yes.

25 Q. 23C?

TRANSCRIBED FROM DIGITAL RECORDING

1                   Who is this e-mail sent from?

2           A.       Larsschmidt22@hotmail.com.

3           Q.       And who is it sent to?

4           A.       A best.

5           Q.       And what is the date on this particular e-mail?

6           A.       October 8, 2015.

7           Q.       And can you read me the text of this -- the body of  
8 this e-mail?

9           A.       "Hi, you are hot. I am 31 years old, athletic body,  
10 pick in clothes. Want to meet? I am the right one in the  
11 picture."

12          Q.       Okay. And when you were looking at the search  
13 warrant return from Hotmail, did you expand these  
14 thumbnails?

15          A.       Yes, I looked at the two attachments to the e-mail.

16          Q.       Okay. And based upon when you were looking at --  
17 I'm assuming you looked at multiple attachments to multiple  
18 different e-mails?

19          A.       Yes.

20          Q.       Is this photo a complete photo of a thumbnail, or  
21 would you have to look at the full thumbnail to be able to  
22 see what the full photo looks like?

23          A.       I opened up the two thumbnails to see the full  
24 attachment.

25          Q.       Okay.

TRANSCRIBED FROM DIGITAL RECORDING

1 Can you go to page 2, Marissa?

2 Is this the full photo of the thumbnail that was  
3 in the previous e-mail?

4 A. Yes.

5 Q. Who is the person on the right?

6 A. The defendant, Mr. Fuechtener.

7 Q. Let's go to 23D.

8 Who is this e-mail from?

9 A. Larsschmidt22@hotmail.com.

10 Q. And who is this e-mail to?

11 A. A Craigslist posting. And the ID on the other  
12 person is 3994612298.

13 Q. And can you read me the body of that e-mail?

14 A. "Yes. Here you go. I am the left one. Please send  
15 yours as well. Lars."

16 Q. So this particular e-mail was signed Lars; correct?

17 A. Yes.

18 Q. And what was the date of this e-mail?

19 A. August 11, 2013.

20 Q. And same question as before, did you expand the  
21 thumbnail on this particular photo?

22 A. Yes.

23 Q. Go to the next page.

24 Is that the photo?

25 A. Yes.



—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Who is on the left?

2 A. The defendant, Mr. Fuechtener.

3 Q. Okay. Look at 23E. Who is this e-mail from?

4 A. Larsschmidt22@hotmail.com.

5 Q. And is this also to another Craigslist user? I'm  
6 not going to make you read that long number.

7 A. Yes.

8 Q. Okay. Read me the body of that e-mail.

9 A. "Hello. I'm a 28-year-old guy. I have favors to  
10 share. I partied already and fucking horny. I am bi,  
11 athletic body. I am a swimmer in a show. I am from  
12 Europe. Enclosed you will find pics. Let me know if you  
13 are still interested." Signed "Lars."

14 Q. Okay. Based upon being an adult living in this  
15 world, and also based upon your training and experience and  
16 working in the Child Exploitation Task Force, what does bi  
17 mean?

18 A. That someone is interested in males and females.

19 Q. Okay. What is the date on this e-mail?

20 A. June 18th, 2015.

21 Q. Okay. And there was a thumbnail attached to this  
22 particular photo?

23 A. Yes.

24 Q. You expanded that thumbnail?

25 A. Yes.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Page 02, please.

2 Is that the photo?

3 A. Yes.

4 Q. Who is the only male in this photo?

5 A. The defendant, Mr. Fuechtener.

6 Q. Go to 23F, please.

7 Who is this e-mail from?

8 A. This e-mail is from safepay.com.

9 Q. And who is it to?

10 A. Larsschmidt22@hotmail.com.

11 Q. And what is the date on this particular e-mail?

12 A. September 1st, 2015.

13 Q. Okay. Can you read me the body of the e-mail  
14 starting from "thank you."

15 A. "Thank you, Jan Fuechtener, for purchasing through  
16 SafePay. Below is the information regarding your purchase.  
17 Purchase information: Website, www.sketchysex.com.  
18 Purchase ID: 34702584. Transaction ID: 51273052. User  
19 name: Larsusa22. Password: Sketchysex123.

20 Q. What was the transaction amount?

21 A. The transaction amount was 24.95.

22 Q. And at the very bottom it says "statement  
23 descriptor." Can you read me that line.

24 A. Where --

25 Q. "For your privacy." The very last line of the

TRANSCRIBED FROM DIGITAL RECORDING

1 e-mail.

2 A. "For your privacy, safepay.com will appear on your  
3 statement."

4 Q. Okay. Are you familiar with the name larsusa22 in  
5 any other way?

6 A. Yes.

7 Q. Where?

8 A. On the Skype chats.

9 Q. And is that the same user name as used on Skype?

10 A. Yes.

11 Q. Did you cross-reference this charge with any charge  
12 on a credit card statement?

13 A. Yes.

14 Q. And go ahead and turn to Government's Exhibit 24.

15 What is that document?

16 A. This is the certification of the Bank of America  
17 records that were subpoenaed.

18 Q. Okay. And go ahead and flip through all of  
19 Government's Exhibit 24.

20 Do you recognize that?

21 A. Yes.

22 Q. What is it? What is it?

23 A. These are the records that were subpoenaed from Bank  
24 of America.

25 Q. Okay. And that first page, you said that it was

—TRANSCRIBED FROM DIGITAL RECORDING—

1 sent with an authorization or authentication; is that  
2 correct?

3 A. Yes.

4 MS. ROOHANI: Your Honor, I would move to admit  
5 Government's Exhibit 24 pursuant to the Court's pretrial  
6 order.

7 THE COURT: Any objection?

8 MR. MARCHESE: No objection.

9 THE COURT: All right. Exhibit 24 is admitted.  
10 (Government's Exhibit 24 received.)

11 BY MS. ROOHANI:

12 Q. Okay. Is this a document that you cross-referenced  
13 with that SafePay?

14 A. Yeah, we cross-referenced to see if that charge was  
15 made by Mr. Fuechtener by the Bank of America charge card.

16 Q. Okay. I'm going to direct your attention to Bates  
17 stamp at the bottom. It says 3968. And specifically to  
18 the charge that posted on 9/4 that was made on 9/1.

19 A. Yes.

20 Q. Can you publish that, please. Okay. I realize that  
21 you don't have it, so I'm going to point you to where I'm  
22 talking about. Right there.

23 What was the description of that charge?

24 A. It was safepay.com.

25 Q. And was that the same as what it said on the e-mail

TRANSCRIBED FROM DIGITAL RECORDING

1 @hotmail?

2 A. Yes.

3 Q. Who was the payee on that particular account? Who  
4 did the payment get made to?

5 A. Safepay.com.

6 Q. What was the amount?

7 A. 24.95.

8 Q. And does that also match the e-mail?

9 A. Yes.

10 Q. Do you know whose credit card made that purchase?

11 A. Jan Feuchtener.

12 Q. How do you know that?

13 A. Because it says right here.

14 Q. Okay.

15 And I want to go to a couple of pages before  
16 that, Marissa. And I will tell you which one. That one.  
17 Sorry. Go back to 3967.

18 And did you -- is there another person who owns  
19 a credit card on this particular account?

20 A. Yes.

21 Q. And who is that?

22 A. Frank Alfter.

23 Q. How do you know that?

24 A. Because it says it right here.

25 Q. And for the entire month of August, did

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Mr. Fuechtener and Mr. Alfter make purchases on these  
2 particular accounts?

3 A. Yes.

4 Q. Okay.

5 MS. ROOHANI: Your Honor, I'd pass the witness  
6 at this time.

7 THE COURT: All right.

8 Any cross?

9 MR. MARCHESE: Yes. Thank you.

10 CROSS-EXAMINATION

11 BY MR. MARCHESE:

12 Q. Good morning.

13 A. Good morning.

14 Q. You testified on direct examination that you were a  
15 part of the search in this particular case?

16 A. Yes.

17 Q. Okay. And what was your role in the search?

18 A. I kept the photo log during the search warrant.

19 Q. I'm sorry?

20 A. I kept the photo log during the search warrant.

21 Q. Okay. So we've had some prior testimony. Obviously  
22 you weren't here. But would it be fair to say that some  
23 other individuals go in and secure the house -- I believe  
24 that was a SWAT team --

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. -- and then once that home is secure, at that point  
2 the rest of the team, for lack of a better term, would make  
3 entry into the house; correct?

4 A. Yes.

5 Q. And you would be part of that team?

6 A. Yes.

7 Q. Okay. Approximately what time did you arrive at the  
8 residence on that day?

9 A. I don't recall what time the entry was made.  
10 Probably early in the morning, maybe 7:30.

11 Q. Okay. And how long were you at the residence on  
12 that day?

13 A. We were probably there until 1:00 or 2:00 in the  
14 afternoon.

15 Q. Now, you had also testified on direct examination  
16 that part of your job is background?

17 A. Yes.

18 Q. Meaning, you're just going to take a look and see  
19 exactly what it is that you're dealing with. Is that fair  
20 to say?

21 A. Yes.

22 Q. What steps did you take in order -- because every  
23 case is different, obviously.

24 A. Yes.

25 Q. What steps did you take in order to get a background

—TRANSCRIBED FROM DIGITAL RECORDING—

1 on this particular case?

2 A. I helped serve some subpoenas. We saw what IP  
3 addresses came back to the residence. I did some social  
4 media work to see who else was living at the house, if  
5 there was other people that -- who might be at the  
6 residence when the team made entry, things of that nature.

7 Q. Okay. What social media research did you do?

8 A. I looked at Facebook, things that were open to the  
9 public. Looked at Twitter. Looked at -- to see if the  
10 defendant had a MySpace or other things that were publicly  
11 available.

12 Q. Based on your investigation, what were you able to  
13 find in reference as to who was residing at the Donald  
14 Nelson residence?

15 A. It appeared that the defendant, Mr. Fuechtener, and  
16 his husband, Frank Alfter, were the only two residents at  
17 the Donald Nelson house.

18 Q. Were you able to find out anything in reference to  
19 Mr. Fuechtener's biographical data; meaning relatives,  
20 brothers, sisters, aunts, uncles, anything of that nature?

21 A. No. I could tell that he was a German citizen. He  
22 appeared to be here legally at that time. But other than  
23 that, it didn't look like he had any other family members  
24 that resided here with him.

25 Q. Okay. So based on your investigation, he had no



—TRANSCRIBED FROM DIGITAL RECORDING—

1 family members that resided in the United States; correct?

2 A. No.

3 Q. And the only other person, to your knowledge, based  
4 on your investigation, that resided with Mr. Fuechtener  
5 would have been his husband, Frank Alfter --

6 A. Yes.

7 Q. -- correct?

8 Now, obviously you were at the search; correct?

9 A. Yes.

10 Q. And fair to say this is not your average three-  
11 bedroom, two-bath house?

12 A. No.

13 Q. Okay?

14 A. It was a beautiful home.

15 Q. Very large; correct?

16 A. Yes.

17 Q. Did you ever look into the square footage, or could  
18 you guesstimate to the Court what the square footage of the  
19 home would be?

20 A. I don't recall what the square footage of the home  
21 was.

22 Q. Okay. Do you know how many bedrooms, give or take?

23 A. I think it was approximately six or seven bedrooms.

24 Q. Okay. We can both agree, large house?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. Now, based on your investigation, you said  
2 you checked some IP addresses; correct?

3 A. Yes.

4 Q. Did you have any contact with GigaTribe?

5 A. I don't believe we had contact with GigaTribe before  
6 the search warrant.

7 Q. Okay. Do you remember receiving an e-mail  
8 approximately December 2nd of 2015 from GigaTribe?

9 A. I don't recall.

10 Q. If I was to show you a copy of that e-mail, would  
11 that refresh your recollection?

12 A. It could.

13 Q. 126 through 129.

14 Would you just take a look at that real quick  
15 and see if that refreshes your recollection?

16 (Discussion held off the record.)

17 MS. CARTIER-GIROUX: Could I just ask we be  
18 shown something before it be shown to the witness because  
19 we don't have a copy of it, and it's not a defense exhibit.  
20 So if we could just take a look at it first.

21 MR. MARCHESE: 126 through 129.

22 MS. ROOHANI: We don't have our --

23 MS. CARTIER-GIROUX: I don't have my -- I would  
24 have to look through eight binders. So if we could just  
25 look at the exhibit before it's shown --

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MR. MARCHESE: (Inaudible) my black binder is  
2 right there.

3 THE COURT: Just to be clear, these are copies  
4 that the defense obtained from the government?

5 MR. MARCHESE: (Inaudible.)

6 THE COURT: Okay. It's just a matter of there's  
7 voluminous information that's difficult to find, even with  
8 the Bates stamp? So they're not Bates stamped?

9 MR. MARCHESE: (Inaudible.)

10 THE COURT: Is there more than one number 126?

11 MR. MARCHESE: No.

12 MS. ROOHANI: No, Your Honor. We just don't  
13 actually have -- there's over 4,000 pages of Bates numbers.  
14 That's why we're -- don't have necessarily all of them with  
15 us. We just wanted to see what it was.

16 BY MR. MARCHESE:

17 Q. Does that refresh your recollection?

18 A. Yes.

19 Q. (Inaudible.)

20 A. Okay.

21 Q. And do you remember receiving that e-mail now?

22 A. Yes. Thank you for refreshing my memory.

23 Q. And what was the purpose of that e-mail?

24 A. We were trying to get IP address information to  
25 subpoena from Cox Communication.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Okay. And part of that is basically you want to tie  
2 this lars45 user name to my client, Mr. Fuechtener; fair to  
3 say?

4 A. Right. Before we serve his search warrant, we want  
5 to be absolutely certain that we're getting the right  
6 house.

7 Q. Okay. Through the course of your investigation, did  
8 it come -- become clear to you what it was or is that my  
9 client does for a living?

10 A. Yes.

11 Q. And what is that?

12 A. He was a magician on the Las Vegas Strip.

13 Q. Do you know how old he is?

14 A. Yes.

15 Q. How old is he?

16 A. He's in his mid 30s. I think he's 37 or 38 now.

17 Q. Okay.

18 A. I think from that subpoena to GigaTribe, we were  
19 hoping to get an e-mail address that the GigaTribe account  
20 was set up with, to help with the background investigation.

21 Q. Sure. And that came back actually to a  
22 larsschmidt@hotmail -- 22, excuse me --

23 A. Right.

24 Q. --@hotmail.com?

25 A. And that was -- that helped with the background

—TRANSCRIBED FROM DIGITAL RECORDING—

1 investigation.

2 Q. And part of your investigation was actually to go  
3 and subpoena the Hotmail records; correct?

4 A. Correct.

5 Q. And you did that?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Did you review all those records personally or --

10 A. Yes.

11 Q. Okay. So you go through them, and I guess you flag  
12 documents, for lack of a better term, as hot, ones that you  
13 think would be useful to your investigation; correct?

14 A. Yes.

15 Q. And some of those documents would have been the ones  
16 that we just saw in court; correct?

17 A. Yes.

18 MR. MARCHESE: Your Honor, permission to  
19 approach with Defense Exhibit 5040?

20 THE COURT: Yes.

21 BY MR. MARCHESE:

22 Q. Showing you this document. Do you recognize this  
23 document?

24 A. I do recognize this document.

25 Q. Okay. And is that one of the documents that was

—TRANSCRIBED FROM DIGITAL RECORDING—

1       procured as a result of your Hotmail subpoena?

2       A.       Yes.

3       Q.       And it fairly and accurately depicts what you saw of  
4       that e-mail?

5       A.       Yes.

6               MR. MARCHESE: Your Honor, at this time, defense  
7       moves to enter 5040 into evidence.

8               THE COURT: Any objection?

9               THE WITNESS: Is it just the one attachment, or  
10      there was --

11              MR. MARCHESE: Well -- the reason that I printed  
12      it off was -- I don't know if you recollect, but this is  
13      actually that (indiscernible) --

14              THE WITNESS: Right. Okay. And then this one  
15      was a screenshot. I'm familiar with this e-mail. This was  
16      a screenshot from a Kevin Kleeping's Facebook account.

17      Q.       Correct. Okay.

18              THE COURT: All right. So any objection to  
19      Defendant's Exhibit 5040 being admitted?

20              MS. ROOHANI: Your Honor, I'd just like to voir  
21      dire the witness briefly, if that's okay, with regard to  
22      the attachments to the e-mail.

23              Because in the Defense Exhibit that's given to  
24      us, there's actually two photos, and I need to know what  
25      she was shown.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE COURT: So is it two pages, Defense Exhibit  
2 5040?

3 MS. ROOHANI: It's actually three pages in our  
4 defense book. There's an additional page.

5 MR. MARCHESE: Oh.

6 THE WITNESS: I was just shown two.

7 THE COURT: All right. Well, go ahead,  
8 Ms. Roohani.

9 VOIR DIRE EXAMINATION

10 BY MS. ROOHANI:

11 Q. Go ahead and open up that defense book in front of  
12 you to 5040. It's actually tab 40.

13 THE COURT: Did you say the defense book or the  
14 government book?

15 MS. ROOHANI: This is the defense book. This is  
16 not a government exhibit.

17 THE COURT: Okay. She's in the other book.

18 BY MS. ROOHANI:

19 Q. And how many pages are included on that particular  
20 exhibit?

21 A. Three.

22 Q. Do you recognize all of these?

23 A. The third one is different than the attachment  
24 that's actually to the e-mail.

25 Q. And how do you know that it's different?

TRANSCRIBED FROM DIGITAL RECORDING

1       A.       Because the attachment to the e-mail is a screenshot  
2       from Facebook.

3       Q.       And is that not what the third page is in the  
4       defense exhibit?

5       A.       In the defense exhibit this is a NetClean report  
6       picture.

7       Q.       Okay. And is the -- is the photo itself the same?

8       A.       Yes.

9       Q.       But the attachment that was to the e-mail that you  
10       said that you were familiar with, how is that different?

11       A.       It's a screenshot that shows it's from Kevin  
12       Klepping's Facebook. It's a screenshot.

13       Q.       Okay.

14               MS. ROOHANI: Your Honor, I would -- I have no  
15       objection to the first two pages of Defense Exhibit 5040  
16       being admitted, but this is not a complete exhibit in terms  
17       of -- I do have an objection to that last page being  
18       admitted as part of this exhibit.

19               THE COURT: What's the objection to the third  
20       page being admitted?

21               MS. ROOHANI: It's not part of the e-mail, and  
22       she's not familiar with that particular -- that particular  
23       photo as being part of this e-mail.

24               THE COURT: All right. Well, she's familiar  
25       with the photograph. She said where it was taken from.



—TRANSCRIBED FROM DIGITAL RECORDING—

1 But I agree she's saying that it doesn't belong with that  
2 e-mail. It's a separate document. But she's still  
3 familiar with the document.

4 THE WITNESS: This one is printed from NetClean.

5 MR. MARCHESE: It's the same photo, correct,  
6 just a larger photo from NetClean?

7 THE WITNESS: It's taken from somewhere else.

8 MR. MARCHESE: Correct.

9 THE WITNESS: This one is taken from NetClean.  
10 But this one shows that it's a screenshot from somewhere  
11 else.

12 THE COURT: So why don't we divide it up as a  
13 Defense Exhibit 5040, the first two pages, and 5040A can be  
14 the third page as a separate exhibit that's not part of the  
15 e-mail.

16 MR. MARCHESE: I -- what I'm feeling is that the  
17 objection is that we're somehow trying to mislead the  
18 Court.

19 All we did is a very small thumbnail. We just  
20 printed a larger picture that we had found on one of the  
21 devices. It's the same picture, it's just larger. And we  
22 found it in a different spot. Same picture. Just bigger.

23 MS. ROOHANI: Your Honor, I have a copy of the  
24 actual attachment. So if I could show that to  
25 Ms. Badalucco, then we could enter this particular photo.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   THE COURT: All right. Well, I have no problem  
2 adding the third page to 5040 and then removing the third  
3 page that was provided and just marking it as a different  
4 exhibit, so it could still be available so we can see it in  
5 a larger view.

6                   MR. MARCHESE: And, Your Honor, how did you want  
7 to have me mark this?

8                   THE COURT: Oh, I was recommending, since it's  
9 already marked as Defendant's Exhibit 5040, just make it  
10 5040A.

11                  MR. MARCHESE: Got it.

12                  THE COURT: To show that it's -- that that's --  
13 that it's similar to and that's where it falls in line for  
14 purposes of having it conveniently located, but that it  
15 isn't actually part of 5040.

16                  MR. MARCHESE: Thank you.

17                               CROSS-EXAMINATION (Resumed)

18 BY MR. MARCHESE:

19 Q. Do you recognize that?

20 A. Yes.

21 Q. How do you recognize it?

22 A. It's one of the attachments to that e-mail.

23 Q. All right. Same exact photo; correct?

24 A. Yes.

25 Q. Just from a different place; correct?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Yes.

2 Q. Fair and accurate depiction?

3 A. Yes.

4 MR. MARCHESE: Move it into evidence, Your  
5 Honor.

6 THE COURT: Any objection?

7 MS. ROOHANI: No objection, Your Honor.

8 THE COURT: All right. So Defense Exhibit 5040,  
9 the three original pages with the e-mail, the correct  
10 e-mail attachment is admitted.

11 (Defendant's Exhibit 5040 received.)

12 THE COURT: And then 5040A, did you also want to  
13 include that so we can see the larger picture?

14 MR. MARCHESE: Actually, can I grab that one  
15 from you? I apologize.

16 Thank you.

17 BY MR. MARCHESE:

18 Q. And showing you what's been brought into evidence as  
19 5040, and you previously testified that you recognized  
20 this?

21 A. Yes.

22 Q. And can you read the text on this?

23 A. "I can host right now. Do you know any trannies? I  
24 might have a few. Send me a pic of your fat cock again."

25 Q. And this appears to be an e-mail from the

TRANSCRIBED FROM DIGITAL RECORDING

1 larsschmidt address; correct?

2 A. Yes.

3 Q. And it was a Craigslist ad; is that correct?

4 A. Yes.

5 Q. Okay. Isn't it true that there were many e-mails in  
6 the sent folder off of the Craigslist ad; is that fair to  
7 say?

8 A. Yes.

9 Q. Okay. Did you review all the sent items?

10 A. I reviewed -- yes.

11 Q. Okay. Isn't it true that basically the majority of  
12 the e-mails from this time period, we're talking March of  
13 2015 to your subpoena, the greater majority of the e-mails  
14 that were in the sent folder were from the Craigslist ad;  
15 fair to say?

16 A. Yes.

17 Q. Isn't it also fair to say that this e-mail didn't  
18 really have a lot of activity, it was a lot junk e-mails,  
19 Best Buy, Viagra, things of that nature?

20 A. There was a lot of junk e-mails in his e-mail  
21 account.

22 Q. Okay. And I'm just going to publish this photo that  
23 we had just entered into evidence.

24 What is this a picture of, so the Court is  
25 aware?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       Frank Alfter. And then in that middle one is Kevin  
2       Klepping. And I don't recognize the third person in the  
3       photo.

4       Q.       And basically all this is is just a larger photo of  
5       the thumbnail from the e-mail that was sent as larsschmidt;  
6       right?

7       A.       Yes.

8       Q.       Can we go back briefly to this. Why don't you blow  
9       it up. And what we're going to be focusing on is the  
10      profile picture.

11               Now, this picture is obviously a man holding his  
12      private area; fair to say?

13      A.       Yes.

14      Q.       At any time during your subpoena to Grindr, did you,  
15      in fact, match this picture with any of your subpoena  
16      requests?

17      A.       No.

18      Q.       Part of your subpoena request was also to subpoena  
19      the information regarding the janrouven@aol account; is  
20      that correct?

21      A.       Yes.

22      Q.       Isn't it true that that account information came  
23      back to Frank Alfter; correct?

24      A.       I believe so.

25      Q.       You also sent out a subpoena request in reference to

TRANSCRIBED FROM DIGITAL RECORDING

1 the larsusa account, 22 account?

2 Do you remember doing that back in May 2nd of  
3 2016?

4 A. Yes.

5 Q. Okay. Isn't it also true that the account  
6 information came back to Frank Alfter on that particular  
7 account?

8 A. I don't recall.

9 Q. Okay. If I was to show you a copy of your -- I  
10 believe it's a 302 -- yes, your 302, would that refresh  
11 your recollection?

12 A. Yes.

13 Q. And would you just take a look at that, please, and  
14 see if that refreshes your recollection.

15 A. Yes.

16 Q. And isn't it true that when you sent out your  
17 subpoena, that the -- for larsusa22, that the account  
18 information came back to Frank Alfter; correct?

19 A. It did.

20 MS. ROOHANI: Your Honor, could Mr. Marchese --  
21 this -- I just want to be clear, because this is not  
22 admitted into evidence, who this is coming from. Because  
23 it says Mindgeek. So I just want to clarify who, what  
24 company the subpoena's coming from.

25

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MR. MARCHESE:

2 Q. Do you --

3 THE COURT: You mean who was subpoenaed?

4 MS. ROOHANI: Yes.

5 THE COURT: All right. So the subpoena was to  
6 Hotmail or --

7 MR. MARCHESE: The subpoena was in reference to  
8 her, the witness, sending out a subpoena request for the  
9 user name larsusa22.

10 THE COURT: To whom was the subpoena sent?

11 MR. MARCHESE: Sent --

12 THE WITNESS: It was to PornHub.

13 THE COURT: Say it again. PornHub?

14 THE WITNESS: PornHub.

15 THE COURT: Thank you.

16 THE WITNESS: And PornHub is by Mindgeek. And  
17 so when we sent the subpoena for larsusa for PornHub, the  
18 account came back.

19 I want to say that Frank Alfter was the --

20 MR. MARCHESE: There's no question pending.

21 THE WITNESS: Okay.

22 MR. MARCHESE: Yeah. Sorry.

23 BY MR. MARCHESE:

24 Q. Now, I want to turn your attention to these Grindr  
25 chats that were entered into evidence.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   Did you go through the same process with that  
2                   with the e-mails that you looked at all those chats --

3           A.       Yes.

4           Q.       -- and you saw what you thought might have some  
5                   evidentiary value and took it from there?

6           A.       Yes.

7           Q.       Okay. And I'm not going to go through all of them,  
8                   because I know you just did, and I have some as well that I  
9                   want to show you.

10                   Because you basically just picked out the ones  
11                   for trial that you thought would be useful. There are  
12                   other chats; correct?

13          A.       Yes.

14          Q.       But in the interest of judicial economy and, you  
15                   know, we'd like to all have a Thanksgiving here, you kind  
16                   of condensed it to make it easier for everyone?

17          A.       Yes.

18          Q.       Okay. Now, if you could go into the government's  
19                   binder under Exhibit 21.

20          A.       Yes.

21          Q.       Actually, you know what, I'll just print it. I'll  
22                   make your life and government's life a little bit easier.  
23                   I'm going to show you 21B-10. And I've actually got it  
24                   highlighted for you.

25                   So this one with the arrow, that's from 556780.



TRANSCRIBED FROM DIGITAL RECORDING

1 A. Okay.

2 Q. And it's the government's contention that 54111653  
3 is to my client, Mr. Fuechtener. Fair to say?

4 A. Yes.

5 Q. Okay. So that phone number is sent from another  
6 individual to my client allegedly; correct?

7 A. Yes.

8 Q. Were there any steps taken in reference to that  
9 phone number?

10 A. That phone number was sent to Mr. Fuechtener.

11 Q. Right. But as a result, to your knowledge, of the  
12 government's investigation, did anyone try to contact this  
13 unknown individual on the other end of this chat?

14 A. Not to my knowledge.

15 Q. Because one of the difficult things with Grindr is  
16 we're just going off of text messages; correct?

17 A. Correct.

18 Q. We don't actually know who it is; correct?

19 A. Right.

20 Q. One of the tools that the government obviously uses  
21 to send out subpoenas, see whose account it is; correct?

22 A. Right.

23 Q. Try to match pictures with the account; correct?

24 A. Right.

25 Q. So we don't actually -- can't see who is behind the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 keyboard or the text message or anything like that;  
2 correct?

3 A. Correct.

4 Q. Would you agree with me that it would have been very  
5 helpful for the government to contact this individual to  
6 see if, in fact, they recognized Mr. Fuechtener?

7 A. Could have been, but that's not my job role.

8 Q. Okay. That's someone else's job?

9 A. Yes.

10 Q. Okay. Now, I want to -- actually, if you take a  
11 look at Defense Exhibit 5035?

12 A. Would that be in here?

13 Q. I'm sorry?

14 A. Would that be in here?

15 THE COURT: 35?

16 BY MR. MARCHESE:

17 Q. Or 35. I'm sorry. Okay.

18 Those are some Grindr chats that hopefully you  
19 recognize. Would those be some of the ones that you had  
20 extracted from the Grindr account?

21 A. There's a lot in here. I'm not sure if I recognize  
22 this other profile.

23 Q. Well, there are ones from this 54111653 user name;  
24 correct? We know that.

25 A. Right.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. We've talked about that user name.

2 Okay. Do they look familiar to you?

3 A. I don't recognize all of them. But if they're from  
4 our subpoena that we turned over to you in discovery.

5 Q. Okay. You do recognize some of them; correct?

6 A. Yes.

7 Q. All right. And based on what you recognize, it is  
8 fairly and accurately depicting what you received to your  
9 subpoena from Grindr; correct?

10 A. I can't be sure of that because I don't have our  
11 return in front of me.

12 Q. Okay.

13 A. And there was a lot of information returned to us.  
14 I'm not entirely sure.

15 MR. MARCHESE: Well, Your Honor, I would still  
16 move for them pursuant to the Court's order. If not, then  
17 I guess I would ask that we take a break, I will show her  
18 the entire --

19 THE COURT: Are they Bates stamped? Did you  
20 receive those from the government?

21 MR. MARCHESE: Yes. They were in 2028.

22 THE COURT: So do you have any objection,  
23 Ms. Roohani?

24 MS. ROOHANI: No, Your Honor. I do believe that  
25 because these are Bates stamped, these did come under the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Court's pretrial order that admitted them. So I have no  
2 objection.

3 THE COURT: All right. So Exhibit 5035 will be  
4 admitted.

5 MR. MARCHESE: Okay.

6 (Defendant's Exhibit 5035 received.)

7 BY MR. MARCHESE:

8 Q. Now, on direct examination there was some questions  
9 about time from Grindr; correct?

10 It's your testimony that you were not able to  
11 ascertain the actual times that these messages are sent?

12 A. I wasn't sure. I guess (indiscernible) looking at  
13 it.

14 Q. Well, would you agree with me it's either going to  
15 be one or two times, it's either going to be Pacific  
16 Standard Time or UTC time?

17 A. Yes.

18 Q. Okay. And UTC time is going to be minus seven or  
19 eight, depending on daylight savings?

20 A. Yes.

21 Q. It gets a little confusing, but we got to go through  
22 it.

23 All right. So I'm going to show you the first  
24 one, the first page. I'll publish it for you, make it  
25 easier.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   Okay. Now, I got this highlighted to make it a  
2 little bit easier because I know it's small. You can read  
3 it okay, though?

4           A.       Yes.

5           Q.       Okay. And we've established previously it's your  
6 testimony you believe that 51 -- 54111653 is, in fact,  
7 Mr. Fuechtener; correct?

8           A.       Yes.

9           Q.       And on this particular document it says that this  
10 individual doesn't have a phone and that he's on a  
11 friend's -- or he or she is on a friend's iPad; correct?

12          A.       Yes.

13          Q.       Okay. It also says that the individual needs to  
14 leave the house and has to get to work; correct?

15          A.       Yes.

16          Q.       Okay. What time does it say there? So that's 1954?

17          A.       Yes.

18          Q.       Okay. So if that's military time, is that going to  
19 be approximately 7:54?

20          A.       Yes.

21          Q.       p.m.?

22          A.       Yes.

23          Q.       And if it's UTC time, it's going to be approximately  
24 11:00 or noon; correct?

25          A.       Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Do you see that phone number there, the 775 number;  
2 correct?

3 A. Yes.

4 Q. Okay. Isn't it true that in the course and scope of  
5 your investigation that you sent out subpoenas, never at  
6 any point in time did the 775 -- 475-4251 number come back  
7 to my client, Mr. Fuechtener?

8 A. We sent out a (indiscernible) to that for Level 3  
9 Communications and never received a response.

10 Q. Okay. So the answer is no, you did not have any  
11 nexus to that account and Mr. Fuechtener; fair to say?

12 A. (No audible response.)

13 Q. Okay. I'm going to turn the page to the next  
14 exhibit. Okay.

15 Now, you see the first highlight. That's from  
16 the 614 user profile; correct?

17 A. Yes.

18 Q. It's not the government's contention that the 614  
19 profile is my client; correct?

20 A. Yes.

21 Q. And that is a -- asking a question, "Dan?" Correct?

22 A. Yes.

23 Q. And then this Dan individual is answering him, "Yep,  
24 I'm back"?

25 A. Correct.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. And then if you go down a little bit you see  
2 my pen mark on the screen?

3 A. Uh-huh.

4 Q. And it says, "Okay, I want to see Lars2"; correct?

5 A. Yes.

6 Q. Now, it's the government's contention that my client  
7 is, in fact, Lars; right?

8 A. Yes.

9 Q. Okay. And would it appear that based on this Grindr  
10 chat that Lars is speaking in the third person or talking  
11 about someone else; fair to say?

12 A. Yes.

13 Q. And then later down it says, "I'm actually waiting  
14 to hear from him right now." Okay? That's what it says?

15 A. (No audible response.)

16 Q. I'm going to show you the next page.

17 The first chat is from 6149 that's not, the  
18 government's contention, being my client, Jan, where this  
19 individual is asking, "Are you alone?" Correct?

20 A. Yes.

21 Q. And then if you go down a few lines, if you look at  
22 541, it -- this individual states, "A client, old guy";  
23 correct?

24 A. Yes.

25 Q. And the last one here, if you look at the first

TRANSCRIBED FROM DIGITAL RECORDING

1 highlight that's from 581, where this is -- the  
2 individual's asking, "Why were your pics different people?"

3 And 541 responds, "I am 28"; correct?

4 A. Yes.

5 Q. And that does not comport with your knowledge of the  
6 defendant or his age; correct?

7 A. No.

8 Q. It also says from 541 that someone else used his  
9 profile; correct?

10 A. Yes.

11 Q. Now, I want to turn your attention to defense 36.  
12 It's in the binder. If you could take a look.

13 Did you get a chance to look at it?

14 A. Yes.

15 Q. Or do you need more time?

16 A. I can see it. It's just really small.

17 MS. ROOHANI: Your Honor, I know that  
18 Mr. Marchese -- this is the Skype chat that we talked about  
19 yesterday that's difficult to read. We just got the Bates  
20 numbers minutes before court started.

21 I would like to ask for some time to review  
22 this. I don't even know what it is -- what it says.

23 MR. MARCHESE: Well, we -- this is what they  
24 gave us. They've had this for months. I mean, obviously  
25 they've went through it. It even has some of their chats



—TRANSCRIBED FROM DIGITAL RECORDING—

1 on it from this olwer individual. I mean, I'll take a  
2 break --

3 THE COURT: Ms. Roohani, are you saying this is  
4 something new, this is not --

5 MR. MARCHESE: No.

6 THE COURT: -- something that the government  
7 provided to the defense?

8 MS. ROOHANI: We did provide it to the defense,  
9 Your Honor. But looking at their exhibit, when they gave  
10 it to us -- and, again, they just -- again, they've been  
11 complaining the whole time that there's a lot of evidence  
12 in this case. And we have read the Skype chats. But I  
13 can't -- based on what they gave us up until this morning,  
14 we couldn't even decipher what chats these were.

15 So I'd like to have an opportunity to look at  
16 them. Not a long opportunity. Five, ten minutes would be  
17 sufficient. But I still have to find it in our discovery.

18 THE COURT: All right. Well, then, let's go  
19 ahead and take our 10-minute bathroom break now. And then  
20 you can take a look at it.

21 But I will advise the witness that you're not to  
22 speak to any of the attorneys during this break. Just go  
23 stretch, walk around, use the bathroom, but don't talk to  
24 any of the attorneys. And then we'll resume --

25 MR. MARCHESE: I won't speak to her, but if she

—TRANSCRIBED FROM DIGITAL RECORDING—

1 likes, maybe it will be easier if we publish the exhibit  
2 while no one's around, and maybe she can expand it so she  
3 cannot go blind.

4 THE COURT: Oh, you mean zoom into it?

5 MR. MARCHESE: Just so it makes it easier.  
6 Because I see her pulling out and straining up there. So  
7 if we can maybe put it -- if she wants to use this, it  
8 might be a little bit easier for her. Because I do concede  
9 it's a little bit difficult to read. We just had  
10 formatting problems. I mean we --

11 THE COURT: Right. But when --

12 MR. MARCHESE: -- use it on my laptop, which  
13 expands.

14 THE COURT: -- we come back, if you want to go  
15 ahead and zoom it for her to review, that's fine.

16 MR. MARCHESE: Yes.

17 THE COURT: But during the break, she's not to  
18 look at anything and talk to any of the attorneys.

19 MR. MARCHESE: Right.

20 MS. ROOHANI: And, Your Honor, we will actually  
21 have to go back to the office to be able to pull this  
22 because this was originally produced on a disk for the  
23 defense, so we don't have the disk.

24 MR. MARCHESE: I will give -- I have the disk.  
25 My laptop screen expands. They can look at whatever they

—TRANSCRIBED FROM DIGITAL RECORDING—

1 like.

2 THE COURT: Okay.

3 MS. ROOHANI: That will be great. Thank you.

4 THE COURT: Thank you. We'll be back -- it's  
5 10:36. Try to be back here in 10, 15 minutes.

6 COURTROOM ADMINISTRATOR: All rise.

7 (Recess from 10:36 a.m. until 10:49 a.m.)

8 COURTROOM ADMINISTRATOR: All rise.

9 THE COURT: Thank you. You may be seated.

10 (Pause in the proceedings.)

11 THE COURT: Are we ready?

12 MS. ROOHANI: Yes, Your Honor.

13 MR. MARCHESE: Yes, Your Honor.

14 THE COURT: All right. So you're ready,  
15 Ms. Roohani?

16 MS. ROOHANI: Yes.

17 THE COURT: All right. So we're back on the  
18 record. And the government has had a chance to review  
19 Defendant's Exhibit 5036.

20 Can we go forward now?

21 BY MR. MARCHESE:

22 Q. Okay. So did you have an opportunity to review  
23 those Skype chats?

24 A. The only Skype chats I had a chance to review in my  
25 duties were the ones between olwer -- or larsusa22 and

TRANSCRIBED FROM DIGITAL RECORDING

1 olwerolwer.

2 Q. Okay. And there are, in fact, Skype chats  
3 between -- in this exhibit between the olwerolwer -- I'm  
4 sorry, I keep butchering that -- and larsusa?

5 A. It looks like it, yes.

6 Q. Okay. Did you not review the other ones or what --

7 A. I wasn't asked to review those ones.

8 Q. Okay.

9 A. I -- Agent Panovich.

10 Q. Okay. So only the agent -- you just acted at the  
11 direction of the agent to look at the certain e-mails?

12 A. Yes.

13 Q. Or Skype chats, I should say?

14 A. Yes, for Skype I was only asked to review the  
15 larsusa22 and olwerolwer ones.

16 MR. MARCHESE: Court's indulgence.

17 And I apologize, Your Honor. These were not  
18 admitted yet. Correct?

19 THE COURT: Correct.

20 BY MR. MARCHESE:

21 Q. Now, these Skype chats, did you extract them and  
22 give them to the agent?

23 A. They were extracted, I believe, by our CART  
24 examiner.

25 Q. Okay.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE COURT: By your what?

2 THE WITNESS: CART examiner.

3 THE COURT: Cart examiner?

4 THE WITNESS: Thomas Radke.

5 THE COURT: Okay. I thought you said cart, like  
6 a go-cart.

7 THE WITNESS: No. I think they came from  
8 evidence item 1B3. That's where the larsusa22 and  
9 olwerolwer ones came from at least.

10 BY MR. MARCHESE:

11 Q. Okay. And all of these particular Skype chats are,  
12 in fact, with the user name Lars 22; is that correct?

13 A. It looks like that, yes.

14 Q. Actually, I apologize. I'm misstating the evidence.  
15 There are a few from janrouven.

16 A. Okay.

17 Q. Does that comport with your knowledge of what you  
18 know in this case?

19 A. The only ones that I reviewed came from larsusa22.

20 Q. Okay. But did you ever see ones from janrouven and  
21 then go ahead and just overlook those because those weren't  
22 what you were focusing on?

23 A. The only Skype ones I reviewed were from larsusa22.

24 Q. Okay. But did you see Skype chats from janrouven?

25 A. No.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Okay. So no other --

2 A. If I did --

3 Q. User names?

4 A. -- I don't remember seeing those.

5 Q. Okay. Any other user names?

6 A. Skype user names?

7 Q. Correct.

8 A. No, not that I recall. Not belonging to the  
9 defendant.

10 MR. MARCHESI: Court's indulgence.

11 (Pause in the proceedings.)

12 MR. MARCHESI: Pass the witness, Your Honor.

13 THE COURT: All right.

14 Redirect, Ms. Roohani?

15 MS. ROOHANI: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. ROOHANI:

18 Q. Okay. Ms. Badalucco, we're going to start -- we're  
19 going to jump around a little bit. So bear with me.

20 Do you remember you testified on  
21 cross-examination about a subpoena request that came from  
22 Mindgeek?

23 A. Yes, I looked at it briefly.

24 Q. Okay.

25 THE COURT: Can you spell that.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: Mindgeek, M-i-n-d-g-e-e-k.

2 BY MS. ROOHANI:

3 Q. And you testified that that is the owner of  
4 pornhub.com.

5 Do you remember that?

6 A. Yes, that's what I recalled.

7 Q. Okay. And I want to show you the subpoena return  
8 that -- it's the same thing that the defense showed you --  
9 and I'll show it to them first.

10 It's Bates number 459 -- sorry, 457 -- 456, 457,  
11 450 -- I'm skipping 458 because we wrote on it, and I don't  
12 want to give you something we wrote on, even though you can  
13 see it because I -- can we turn the Elmo off?

14 COURTROOM ADMINISTRATOR: Do you not need that?

15 MS. ROOHANI: No. Thanks.

16 459 and 460.

17 I'm going to give that to you.

18 Your Honor, may I approach?

19 THE COURT: Yes.

20 MS. ROOHANI: Thank you.

21 BY MS. ROOHANI:

22 Q. So you testified, based upon that document that  
23 Mr. Marchese showed you that the name associated with that  
24 is Frank Alfter; is that correct?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Was there also a credit card on that?

2 A. Yes.

3 Q. Is it possible that Mr. Alfter is not --

4 MR. MARCHESE: Objection, speculation.

5 THE COURT: Sustained.

6 BY MS. ROOHANI:

7 Q. What does the name on that tell you? Does that tell  
8 you that the user name associated with that account is  
9 Frank Alfter, or is it that the user -- Frank Alfter is  
10 associated with the credit card on that account?

11 A. Frank Alfter could be the name of the payee on  
12 the -- or the credit card.

13 Q. But it's unclear from that subpoena what Frank  
14 Alfter is referring to?

15 A. Yes.

16 Q. Okay.

17 A. Frank Alfter could be just the name on the credit  
18 card.

19 Q. Okay.

20 MS. ROOHANI: And then may I approach to get  
21 that back, Your Honor?

22 THE COURT: Yes.

23 MS. ROOHANI: Thank you.

24 THE WITNESS: That's what I was trying to  
25 clarify when he stated no more questions.



TRANSCRIBED FROM DIGITAL RECORDING

1 BY MS. ROOHANI:

2 Q. Mr. Marchese also asked you about an e-mail that you  
3 had sent to GigaTribe?

4 A. Yes.

5 Q. Do you remember that?

6 And you would read that e-mail; is that correct?

7 A. Yes.

8 Q. And you testified on cross-examination that you were  
9 trying to get the e-mail address associated with the lars45  
10 account?

11 A. Yes.

12 Q. Do you remember if that came back to a specific  
13 e-mail?

14 A. I believe it was the larsschmidt22@hotmail.com.

15 Q. And did that come back also with a password to the  
16 lars45 account?

17 A. I believe it did. But I don't recall what that was.

18 Q. If I showed it to you, would that refresh your  
19 recollection?

20 A. Yes.

21 MS. ROOHANI: Jess, do you want to take a look  
22 at this?

23 Your Honor, may I approach?

24 THE COURT: Yes.

25 MS. ROOHANI: Thank you.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE WITNESS: And the password was Lars 1234.

2 BY MS. ROOHANI:

3 Q. Okay. Does that maybe -- was there also other  
4 information on the subsequent pages that came back as part  
5 of that e-mail?

6 A. Yes. It had the contacts of his friends or contacts  
7 on GigaTribe.

8 Q. And did one of those contacts -- was one of those  
9 contacts pedotraderjoe?

10 A. Yes.

11 Q. Was one of those contacts olwerolwer?

12 A. Yes.

13 Q. Okay. I need you to look at the defense exhibit,  
14 which I have now taken out of the binder, and I have no  
15 idea what number this is, the Grindr chats. Is that 35?

16 A. I believe so.

17 Q. Yes. Go ahead and take a look at that.

18 Okay. Look at the Bates stamp number at the  
19 bottom, 2028.

20 A. Okay.

21 Q. Okay. Mr. Marchese spoke with you about a few  
22 highlighted portions, "I don't have a phone, it's broken,  
23 this is my friend's iPad," and then that person gives a  
24 phone number.

25 Do you remember that?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Yes.

2 Q. And you testified on cross-examination that there  
3 was no return after you sent the subpoena request, there  
4 was no return on that?

5 A. Correct.

6 Q. So you can't say definitively one way or the other  
7 whether that is Mr. Fuechtener's phone number or somebody  
8 else's phone number?

9 A. Correct.

10 Q. Go ahead and take a look at page 2055, same exhibit.  
11 And I'm about halfway down. It's the highlighted portion  
12 that says, "I want to see Lars2." And earlier in that  
13 conversation the person identifies himself as Dan.

14 Do you remember that?

15 A. Yes.

16 Q. In the Grindr chats that you reviewed, when another  
17 person is using the Grindr account, do they identify  
18 themselves by a name or "I'm using my friend's Grindr"?

19 A. Can you repeat the question?

20 Q. Sure. So, for example, on this particular one a  
21 person named Dan is using the account, and he identifies  
22 himself. Is that correct?

23 A. Yes.

24 Q. Okay. The Grindr chats that you reviewed, when  
25 another person is using the Grindr, do they identify

TRANSCRIBED FROM DIGITAL RECORDING

1 themselves as another person? Do they identify themselves  
2 as Dan or speak about Lars in the third person?

3 A. Yes.

4 Q. I'm going to ask you -- I understand it's a  
5 complicated question. So let me ask you one more time.

6 So here it says, "I want to see Lars2."

7 A. Okay.

8 Q. Would Lars be speaking about himself in the third  
9 person?

10 A. No.

11 Q. Okay. So if Dan is speaking about Lars --

12 A. Right.

13 Q. -- it's clear that it's not Lars speaking?

14 A. Right.

15 Q. Okay. Go ahead and look at page 2059, specifically  
16 the text that says, "I am 28."

17 A. Right.

18 Q. Do you remember that?

19 A. Yes.

20 Q. Okay. I want you to look -- also look at  
21 Government's Exhibit 23E. It's one of the Hotmail e-mails  
22 that we spoke about. Okay. Mr. Marchese asked you how old  
23 the defendant was.

24 Do you remember that?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And you said he was in his mid 30s?

2 A. Yes.

3 Q. Looking at Government's Exhibit 23E, the person -- I  
4 previously identified a person in the photo attached as the  
5 defendant; correct?

6 A. Yes.

7 Q. And in that particular e-mail, how old does the  
8 defendant identify himself as?

9 A. 28.

10 Q. In that e-mail does the defendant also identify  
11 himself as being bisexual?

12 A. Yes.

13 He also signed that one Lars and attached a  
14 photo of himself.

15 Q. Mr. Marchese directed your attention to Government's  
16 Exhibit 21B, page 010. Can you please go to that.

17 A. Can you say that one again?

18 Q. 21B, page 10.

19 A. Where is this?

20 Q. Government's Exhibit, I'm sorry. Government's  
21 Exhibit -- it's under tab 21. And it's actually Grindr  
22 chat. Page 10 was specifically asking you about the phone  
23 number 603-359-0869.

24 Do you remember your testimony about that?

25 A. Can you say the tab one more time? I'm sorry.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Sure. It's 60 -- he asked you about the phone  
2 number 603-359-0869.

3 A. Yes.

4 Q. And you testified that it wouldn't have been part of  
5 your duties to be able to look up that phone number to  
6 determine who it belonged to.

7 Do you remember that testimony?

8 A. Not that I wouldn't be able to look up who it  
9 belonged to, but to contact that person to see if they met  
10 up with --

11 Q. Correct.

12 A. -- Lars.

13 Q. Who would be the correct person to be able to look  
14 into that phone number?

15 A. I could look into it but not to contact him.

16 Q. Okay. Would Special Agent Panovich be able to  
17 contact him?

18 A. Yes.

19 Q. Would Special Agent Panovich be able to send out a  
20 lead to determine who that person was?

21 A. Yes.

22 Q. And would Special Agent Panovich also be in charge  
23 of determining --

24 MR. MARCHESE: Objection. Leading.

25 THE COURT: Sustained.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MS. ROOHANI:

2 Q. Who would be in charge of determining who this  
3 person is?

4 A. Special Agent Panovich.

5 Q. Okay.

6 MS. ROOHANI: A moment's indulgence, Your Honor.

7 (Pause in the proceedings.)

8 MS. ROOHANI: Your Honor, I pass the witness at  
9 this time.

10 THE COURT: Cross?

11 MS. ROOHANI: Oh, you know what? I forgot one  
12 more thing in my pile of papers.

13 THE COURT: Sure.

14 MS. ROOHANI: Can I ask one more question? Is  
15 that all right?

16 BY MS. ROOHANI:

17 Q. Do you remember you were looking at certain  
18 attachments with Mr. Marchese from the Defense Exhibit  
19 5040?

20 A. Yes.

21 Q. Okay. I want you to look at what has been marked as  
22 Defense Exhibit 5040A that hasn't been admitted, I don't  
23 think -- I'm not --

24 COURTROOM ADMINISTRATOR: It has been admitted.

25 MS. ROOHANI: It has been admitted? Okay.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MS. ROOHANI:

2 Q. Go ahead and take a look at 5040A. And then take a  
3 look at the third page of 5040.

4 A. Okay.

5 Q. Okay. What is the difference between these two  
6 photos? 5040A is what, in particular? Was that the  
7 attachment to the Hotmail e-mail?

8 A. That one that was admitted was the one that --

9 Q. Just don't worry about whether it's admitted or not.  
10 Just go ahead and look at 5040, which is the one we swapped  
11 out; is that right? We swapped it out?

12 MR. MARCHESE: I think we just added it as an  
13 additional exhibit.

14 BY MS. ROOHANI:

15 Q. Okay. You testified on cross-examination that the  
16 original 5040 that was part of the defense exhibit is from  
17 NetClean; is that correct?

18 A. Yes.

19 Q. Okay. And then you also testified that there was a  
20 Facebook screen grab.

21 MS. ROOHANI: And, Your Honor, if -- it seems as  
22 though she's not -- can I approach the witness to show her  
23 the two --

24 THE COURT: Yes --

25 MS. ROOHANI: -- different photos?



TRANSCRIBED FROM DIGITAL RECORDING

1 THE COURT: -- you may.

2 MS. ROOHANI: Thank you.

3 BY MS. ROOHANI:

4 Q. So you testified on cross-examination that the  
5 actual attachment to the e-mail was from Facebook?

6 A. Yes.

7 Q. Okay. And looking at those two photos, is the  
8 difference between those two photos that there's black bars  
9 at the top and bottom --

10 A. Yes.

11 Q. -- of one of them?

12 Is that what indicated to you that it was from  
13 Facebook as opposed to some other platform?

14 A. Yes.

15 Q. The other photo --

16 A. Yes.

17 Q. -- where you testified it was from NetClean --

18 A. Yes.

19 Q. -- that photo is the -- the subjects in the photo  
20 are the same?

21 A. Yes.

22 Q. In the two photos are the same?

23 But the place that the photos came from are  
24 different?

25 A. Yes.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Okay. The photo in the NetClean came from where?  
2 Do you know?

3 A. No.

4 Q. Okay. Do you know where the photo from -- the other  
5 photo, the one from Facebook, where that potentially came  
6 from?

7 A. It came from Facebook.

8 Q. And could anybody take that photo from Facebook?

9 A. Yes.

10 Q. I also would like for you to take a look at the text  
11 of that e-mail in 5040.

12 A. Okay.

13 Q. Does the person ever identify themselves as Lars?

14 A. No.

15 Q. Does the person ever identify themselves as Jan?

16 A. No.

17 Q. And are you familiar with the photo of the man  
18 holding a picture of his -- or holding his penis?

19 A. That was the same photo that was sent out in several  
20 other e-mails.

21 Q. And did some of those e-mails, were some of those  
22 e-mails sent by the defendant or a person identifying  
23 themselves as the defendant?

24 A. Yes.

25 MS. ROOHANI: Now I pass the witness, Your

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Honor.

2 THE COURT: Recross?

3 MS. ROOHANI: May I approach to get those two  
4 photos from her?

5 THE COURT: Yes.

6 MS. ROOHANI: Thank you.

7 MR. MARCHESE: What exhibit number am I up to?

8 COURTROOM ADMINISTRATOR: 5042 will be your  
9 next.

10 (Discussion held off the record.)

11 MR. MARCHESE: Your Honor, may I approach the  
12 witness?

13 THE COURT: Yes.

14 RECROSS-EXAMINATION

15 BY MR. MARCHESE:

16 Q. You were asked a lot of questions about this  
17 particular e-mail that's two-sided.

18 A. Okay.

19 Q. And you remember this particular e-mail because  
20 there's been some testimony about it; correct?

21 A. Yes.

22 Q. And that was an e-mail that you received in the  
23 course and scope of your investigation in this particular  
24 case; correct?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And it's a fair and accurate depiction of what you  
2 received in the course and scope of your investigation?

3 A. Yes.

4 MR. MARCHESE: Your Honor, at this time we're  
5 going to mark this as Defendant's Exhibit 5042 and ask that  
6 it be entered into evidence.

7 THE COURT: Any objection?

8 MS. ROOHANI: No objection, Your Honor.

9 THE COURT: All right. Exhibit 5042 will be  
10 admitted.

11 (Defendant's Exhibit 5042 received.)

12 MR. MARCHESE: And based upon that, Your Honor,  
13 I have no recross.

14 THE COURT: Any redirect?

15 MS. ROOHANI: No, Your Honor.

16 THE COURT: All right. So thank you very much.

17 We'll go ahead and release her; right? Or do we  
18 need to recall her?

19 MS. ROOHANI: No, Your Honor, we don't  
20 anticipate that.

21 THE COURT: All right. So thank you very much  
22 for your service. Go ahead and take anything with you that  
23 you brought. But make sure to leave the exhibits here.

24 (The witness was excused.)

25 THE COURT: The government may call its next

—TRANSCRIBED FROM DIGITAL RECORDING—

1 witness.

2 MS. ROOHANI: United States calls Gary McCamey.

3 (Discussion held off the record.)

4 COURTROOM ADMINISTRATOR: Please raise your  
5 right hand.

6 You do solemnly swear that the testimony you  
7 shall give in the cause now before the Court shall be the  
8 truth, the whole truth, and nothing but the truth, so help  
9 you God?

10 THE WITNESS: I do.

11 COURTROOM ADMINISTRATOR: Thank you. You may be  
12 seated.

13 Please state and spell your full name for the  
14 record.

15 THE WITNESS: Gary McCamey, M-c-c-a-m-e-y.

16 MS. ROOHANI: And, Your Honor, before I start  
17 asking Special Agent McCamey any questions, I wanted to  
18 give a disclaimer to the -- this could be done at sidebar  
19 if we had a jury.

20 Mr. McCamey is a polygrapher. I have instructed  
21 him, and I'm instructing him now, that he is not to talk  
22 anything about the methodology or anything having to do  
23 that. I just wanted to let you know that because it was --  
24 there was -- the interview was given as part of a  
25 polygraph, it wasn't recorded in any way.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   So I wanted to give that disclaimer to the Court  
2 ahead of time. And that's why I won't be asking him  
3 questions related to that.

4                   THE COURT: He gave who a polygraph?

5                   MS. ROOHANI: The defendant.

6                   THE COURT: Oh, okay.

7                   MS. ROOHANI: And we're not going to be  
8 eliciting any testimony dealing with that. But I just  
9 wanted to give the Court a heads-up that that is why some  
10 of the answers that Mr. McCamey gives, it's based upon  
11 that. And so I'm not going to elicit any testimony about  
12 that.

13                   Of course, if the defense opens it up on to  
14 that, then I would ask to redirect him.

15                   MR. DURHAM: Your Honor, I'd just like to make a  
16 record. I'm not sure why the government is even bringing  
17 that up, I mean, to Your Honor. Now it's already -- I  
18 mean, it's out there. I know obviously Your Honor can --

19                   THE COURT: Yeah, I was not aware of it.

20                   But -- so but this witness, Mr. McCamey, or  
21 McCamey, I'm sorry if I pronounce it wrong, he's not -- so  
22 what is the substance of his testimony going to be?

23                   MS. ROOHANI: Your Honor, specifically the only  
24 reason I brought it up is because he interviewed the  
25 defendant, and that interview was not recorded. So if the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 defense asks questions about why it wasn't recorded, I just  
2 want to put the Court on notice that I will have to bring  
3 up the fact that it was that.

4 That's why I wanted to put you on notice. It's  
5 an awkward situation because it is a bench trial.  
6 Typically we would do this at sidebar, outside of the  
7 presence of the jury, to make you aware of that and make  
8 the defense aware of that. But because it's a bench trial,  
9 I wanted to front that issue with you.

10 THE COURT: All right. Well, because it is a  
11 bench trial, I'm the finder of fact.

12 MS. ROOHANI: Absolute --

13 THE COURT: So you're just going to be asking  
14 questions about admissions --

15 MS. ROOHANI: Yes.

16 THE COURT: -- that were made by the defendant  
17 during the interview?

18 MS. ROOHANI: Yes.

19 THE COURT: Okay. Go ahead and proceed.

20 MR. MARCHESE: Your Honor, I think Mr. Durham  
21 wanted to lay a little bit of --

22 THE COURT: Oh, go ahead, Mr. Durham. Yes.  
23 Make your record.

24 MR. MARCHESE: Your Honor, what he wanted to say  
25 is that now what the government has done is they've created

—TRANSCRIBED FROM DIGITAL RECORDING—

1 a negative inference against my client in reference to the  
2 polygraph.

3 It's their witness. They can control their  
4 witness. They can direct their witness to testify  
5 accordingly.

6 So now the problem is is I know that it's a  
7 bench trial, I know that obviously the Court knows the law  
8 and the Court will insulate itself from these issues. But  
9 this is -- I don't know why this was even elicited. We  
10 weren't going to get into this. If it is, it's on us.

11 But now we've created the problem with this  
12 self-serving statement that the government has made about  
13 this polygraph. This was never going to come up until they  
14 brought it up. So that's our issue, Your Honor.

15 THE COURT: All right. Well, I agree. It's  
16 unusual, but I'm not going to belabor the point. There's  
17 no evidence of anything that's been provided yet, just an  
18 explanation given by the government, which is just  
19 argument, not evidence. So there's no evidence of  
20 anything --

21 MS. ROOHANI: Judge, the point is, I don't know  
22 if they know it's a procedure for the FBI not to record a  
23 polygraph interview.

24 THE COURT: Well, you can ask them.

25 MS. ROOHANI: So to avoid that being in the



—TRANSCRIBED FROM DIGITAL RECORDING—

1 record --

2 THE COURT: That's the problem is why is it  
3 being brought up to me instead of if you don't know what  
4 they know, then ask them what they know or don't know; and  
5 if they have an issue then, you know, we could bring it up  
6 and discuss it if it's necessary.

7 So, again, I don't want to belabor it because  
8 we've got the kids coming in. And, of course, as I've said  
9 before, I'm not going to have the kids come in and observe  
10 this particular trial. So I don't want to run out of trial  
11 time. Let's go ahead and just get started with this  
12 witness before we need to break.

13 GARY MCCAMEY

14 called as a witness on behalf of the  
15 Government, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ROOHANI:

18 Q. Special Agent McCamey, who is your employer?

19 A. The Federal Bureau of Investigation.

20 Q. And how long have you been employed with the FBI?

21 A. A little bit over 17 years.

22 Q. And what are your current duties and  
23 responsibilities?

24 A. I am a special agent.

25 Q. Okay. Were you involved in the investigation of the

TRANSCRIBED FROM DIGITAL RECORDING

1 defendant, Jan Fuechtener?

2 A. I was.

3 Q. And what date did you become involved?

4 A. January 21st, 2016.

5 Q. And was that the date that the search warrant was  
6 executed in this case?

7 A. It was.

8 Q. During your involvement in this case, did you have  
9 an opportunity to speak with Mr. Fuechtener?

10 A. I did.

11 Q. Before you spoke with him, did you read him his  
12 *Miranda* rights?

13 A. Yes, I did.

14 Q. Was he in custody at that time?

15 A. No, he was not.

16 Q. And to be clear, was he free to leave?

17 A. Yes, I made it clear that he was free to leave at  
18 any point during the --

19 Q. Was he handcuffed at any point?

20 A. No, he was not.

21 Q. Was he allowed to use the bathroom?

22 A. He was allowed to use the bathroom, and I believe I  
23 offered him something to drink, also.

24 Q. Okay. Was he instructed that he could stop the  
25 interview at any time?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes.

2 Q. Okay. Was he explained about his right to counsel?

3 A. Yes.

4 Q. And at no point did he invoke his right to counsel?

5 A. No, he did not.

6 Q. And did he waive those rights in writing as well  
7 that day?

8 A. Yes, he did.

9 Q. Let's talk about the interview with Mr. Fuechtener.  
10 We already talked about how it was held on January 21st.  
11 Where was it held?

12 A. It was at the Las Vegas division of the Federal  
13 Bureau of Investigation.

14 Q. And what time of day was that?

15 A. The interview started at approximately 1:30 p.m.

16 Q. Was that interview recorded?

17 A. No, it was not.

18 Q. Did Mr. Fuechtener come alone or did he come with  
19 someone else?

20 A. He drove himself there.

21 Q. Okay. And was anyone else in the interview room  
22 with you during this interview?

23 A. Not at -- not through the majority of the interview.  
24 At the conclusion, Special Agent Panovich came into the  
25 interview room.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. And was that at the request of the defendant? Was  
2 that --

3 A. Yes.

4 Q. Before your interview with the defendant, did you  
5 learn certain information from Special Agent Panovich?

6 A. Through Special Agent Panovich and a review of the  
7 search warrant affidavit.

8 Q. Did she explain to you what the investigation was  
9 about?

10 A. Yes.

11 Q. And what was your understanding?

12 A. My understanding that it was a child pornography  
13 investigation, that it involved the sharing of child  
14 pornography images, via peer-to-peer software.

15 I knew that the user name associated with the  
16 peer-to-peer software was lars45.

17 I knew that there was an associated e-mail of --  
18 account of larsschmidt22@hotmail.com.

19 I knew that the log-on information, the IP  
20 information associated with the lars45 account came back to  
21 7080 Donald Nelson.

22 I knew that the subscriber to the Internet there  
23 was Jan Fuechtener.

24 I knew that a search warrant had been executed  
25 at 7080 Donald Nelson earlier that morning and that there

—TRANSCRIBED FROM DIGITAL RECORDING—

1 had been images of child pornography found there and that  
2 Mr. Fuechtener was present.

3 Q. Okay. During your interview with the defendant, did  
4 you ask him if he used the e-mail address  
5 larsschmidt22@hotmail.com?

6 A. I did.

7 Q. And what was his response?

8 A. He told me that that was his e-mail account, that he  
9 had established it several years prior, and that he had  
10 used it for the purposes of going on Craigslist and eBay.

11 Q. At that point did you tell him that you knew that  
12 the lars45 account was associated with  
13 larsschmidt22@hotmail.com?

14 A. I did.

15 Q. Okay. Did you ask him if he used the user name  
16 lars45 in any of his peer-to-peer accounts?

17 A. I did.

18 Q. And what was his response?

19 A. Well, he -- he actually changed his response to that  
20 three separate times.

21 Q. All right. Let's start with the first time.

22 A. Okay.

23 Q. What did he tell you the first time?

24 A. So the first time he told me that he was not  
25 familiar with the lars45 account, that he did not create

—TRANSCRIBED FROM DIGITAL RECORDING—

1 it, he did not use it, and he did not know who did.

2 Q. Okay. At that point when he -- hold on one moment.

3 The second time that you asked him the question  
4 about the lars45 peer-to-peer account, what was his  
5 response?

6 A. Well, he actually told me that -- he brought it up  
7 and he said, you know, "I'm a little bit concerned about  
8 the question you asked me about the lars45 account." He  
9 said, "I probably did create that account for the purposes  
10 of sharing files, including magic videos, but never child  
11 pornography."

12 Q. Okay. And you said that he changed his answer a  
13 third time. What was the third answer that he gave you?

14 A. So near the conclusion of the interview, I asked him  
15 to explain how an account that he said that he created was  
16 used from a computer associated with his address to  
17 trade -- or share child pornography files with an  
18 undercover officer.

19 At that point he corrected me and said, "I told  
20 you that I probably established the account." And he said  
21 that he probably let a person that he identified as  
22 Ferrell, who was someone that he was having a sexual  
23 encounter with, use the account.

24 Q. Did he tell you how long he had been having a sexual  
25 encounter with Ferrell?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       He told me -- he referred to it as a hookup, and I  
2       verified that he meant a sexual encounter, and he said that  
3       he was having this encounter for approximately eight  
4       months.

5       Q.       Could he tell you any identifying information about  
6       Ferrell?

7       A.       I asked him -- when he told me that he had somebody  
8       that was particularly interested in child pornography, I  
9       asked him who this person's name was, and he said, "Well, I  
10      don't know his name."

11               And I said, "Well, you told me you've been  
12      having an encounter with him for eight months."

13               His response to that was, "Well, I have him  
14      saved in my phone under the name Ferrell because that's the  
15      street he lives on."

16      Q.       So the defendant blamed Ferrell for the child  
17      pornography that were on his devices?

18      A.       Yes. He told me that he had spent the night there  
19      the night before and that this person, Ferrell, had used  
20      Mr. Fuechtener's computer for the purposes of watching  
21      child pornography. And he said that all the images there  
22      were based on him spending the night the night before.

23      Q.       Okay. Did the defendant attempt to blame anyone  
24      other than Ferrell?

25      A.       No, he didn't.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. During the course of your interview, were you able  
2 to observe the defendant's demeanor?

3 A. I was.

4 Q. And based upon your training and experience in  
5 interviewing suspects, did you ask him some of the same  
6 questions more than once?

7 A. I did.

8 Q. Why?

9 A. I told him at some point in time during the  
10 interview that he was being evasive. He had changed his  
11 answer twice relating to the child pornography. In other  
12 words, initially he told me, "I don't know anything about  
13 the child pornography." He then later tells me that this  
14 person Ferrell had stayed at his house, and he knew that  
15 the child pornography was there.

16 He had changed his answer three times relating  
17 to the lars45 account.

18 And then I had also asked him about specific  
19 images that were on the thumb drive that had documents  
20 related to him.

21 When I asked him where those images came from,  
22 his response to me was, "I'm not interested in child  
23 pornography, I'm not interested in children."

24 So I kept asking him, "That's not the question I  
25 asked you. I asked you, did you download them? Are these



TRANSCRIBED FROM DIGITAL RECORDING

1       yours?"

2                       And he continued to say, "I'm not interested in  
3       children."

4                       MS. ROOHANI: I just have a few more questions,  
5       Your Honor. I know we're coming up to our timeline so --

6                       THE COURT: Aaron, did you see them out there?

7                       COURTROOM ADMINISTRATOR: Your Honor, they are  
8       out there.

9                       THE COURT: Okay. They are out there. The kids  
10       are out there.

11                      So let's go ahead and take our break for lunch.  
12       And we'll go ahead and resume at 1:00 p.m.

13                      Sir, you're still going to be under oath. And  
14       we ask you that during this break, have lunch, go to the  
15       restroom, stretch, get some fresh air, but don't speak to  
16       any of the attorneys. All right?

17                      THE WITNESS: Okay.

18                      THE COURT: Thank you.

19                      (The noon recess was taken at 11:23 a.m.)

20                                       \*     \*     \*

21

22

23

24

25

—TRANSCRIBED FROM DIGITAL RECORDING—

1 LAS VEGAS, NEVADA, NOVEMBER 15, 2016, 1:06 P.M.

2 --oOo--

3

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. Please be seated.

6 COURTROOM ADMINISTRATOR: This is the time set  
7 for the continuation of day 2 of the bench trial in Case  
8 No. 2:16-cr-100-GMN-CWH, United States of America versus  
9 Jan Rouven Fuechtener.

10 Counsel, please make your appearance for the  
11 record.

12 MS. ROOHANI: Good afternoon, Your Honor. Ellie  
13 Roohani and Lisa Cartier-Giroux for the United States,  
14 joined by Special Agent Panovich.

15 THE COURT: Good afternoon.

16 MR. MARCHESE: And Jess Marchese, Benjamin  
17 Durham, and Michael Sanft on behalf of the defendant, Jan  
18 Rouven Fuechtener.

19 THE COURT: Good afternoon.

20 All right. So everybody is back.

21 Do we have Mr. -- is it McCamey? McCamey.

22 MS. ROOHANI: We should. He was outside.

23 MR. MARCHESE: And before then, Your Honor, the  
24 defense has a motion.

25 THE COURT: All right.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   MR. MARCHESE: We wanted to make a motion for a  
2                   mistrial based upon the fact that the government, before  
3                   they called Mr. McCamey, unsolicited, for no particular  
4                   reason known to the defense, brought up his role in the  
5                   case and the fact that there was a polygraph given in this  
6                   particular case.

7                   It is our position that the government solicited  
8                   that information, and it gives a negative inference to the  
9                   client, as we all know, that polygraph results are  
10                  inadmissible in federal court.

11                  So based upon that it's unfairly prejudicial to  
12                  Mr. Fuechtener, it was through no fault of the defense's,  
13                  it was completely the government's fault and solicited that  
14                  information. If this was a jury trial, it would be  
15                  completely improper for them to bring it up in front of the  
16                  jury. And as the judge being the finder of the fact, I  
17                  can't see the distinction as to why it would be necessary  
18                  for them to bring it up in front of Your Honor.

19                  THE COURT: All right. Well, the problem is  
20                  that what will we do? I declare a mistrial today and then  
21                  we do it over again, and I forget what I heard last time?  
22                  I mean, it would still be something that's in my mind. It  
23                  would just delay things.

24                  Mr. Fuechtener would stay in jail longer until  
25                  we got another trial date.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   So I don't think the remedy would be a mistrial  
2 necessarily. I don't see how that would help you.

3                   If we had a jury, we could just dismiss that  
4 jury, call a new jury, start over again. That's fine.

5                   But as it is, the cat's out of the bag, the  
6 bell's been rung, whatever all those sayings are.

7                   I can put that aside. I understand that the --  
8 whether or not there was a polygraph, whether or not there  
9 were results or conclusive results of that polygraph they  
10 would not be admissible and it's not going to influence my  
11 decision. I'll base my decision based on the facts that  
12 are admitted and the testimony that's provided. And I will  
13 not rely on the fact that there may or may not have been a  
14 polygraph or any results from that interview process.

15                  But I don't know if you wanted to add anything  
16 to that, Ms. Cartier-Giroux.

17                  MS. CARTIER-GIROUX: Judge, just for the record,  
18 we did not provide you with the results. We did not even  
19 talk about that.

20                  The purpose of stating it is because the Court  
21 is the person -- if there was a jury or when there isn't a  
22 jury, you decide the admissibility of evidence. So de  
23 facto, you are going to hear things that may not be  
24 admissible. And it is assumed that the Court can set those  
25 things aside.

—TRANSCRIBED FROM DIGITAL RECORDING—

1           If this was a jury trial, I would absolutely  
2 bring up to the Court that there is a possibility on  
3 cross-examination, based on the fact that it isn't recorded  
4 and the FBI now has a policy of recording interviews, that  
5 that may come as a question.

6           Now, I placed it on the record to avoid because  
7 had we done it, he could have made a legitimate motion for  
8 mistrial, if that was the answer because it's in the  
9 record.

10           Now, the Court could have said, "I'm going to  
11 not take that into consideration because it is a bench  
12 trial."

13           But nothing that we did was improper. We  
14 provided the Court with a potential issue with regard to  
15 the witness. They might have preferred, and maybe the  
16 Court might have preferred, that we just tell them.

17           But we wanted it on the record that we have, in  
18 fact, advised the witness that he was not to mention that  
19 and that we wanted to put them on notice that that would be  
20 a possible answer because that is the explanation as to why  
21 it was not recorded.

22           We were not acting in bad faith, we were doing  
23 what we would normally do in the course of a jury trial,  
24 which we would do with Your Honor as a bench trial, knowing  
25 that you have to make these types of decisions with regard

—TRANSCRIBED FROM DIGITAL RECORDING—

1 to admissibility and can set those things aside.

2 THE COURT: Well, there might be a question that  
3 the best practice here might have been to just talk to  
4 defense counsel, to make sure that they understood why you  
5 were not going to be going into whether or not it was  
6 recorded or not recorded, unless they wanted to get into  
7 the polygraph and they say, "No, of course we don't want  
8 the judge to know about polygraph," then that would be  
9 (inaudible) say if I asked, "Well I don't understand why  
10 this witness didn't record it," you could both say, "Your  
11 Honor, we knew that wasn't recorded and we're comfortable  
12 with that, we don't have an issue with it. It was properly  
13 not recorded."

14 "Oh, okay, counsel." I can tell you more often  
15 than I would like, I'm kept in the dark about things in  
16 civil cases all the time, and I don't like it, but it does  
17 happen, and I understand the reason why it has to be that  
18 way.

19 So there's other ways of doing it. We almost  
20 never have bench trials in criminal cases, so I don't  
21 expect everyone to be well versed in all these different  
22 things we do. In civil cases, more often than not they're  
23 bench trials just because they think it goes quicker and it  
24 saves them money.

25 But needless to say, Ms. Cartier-Giroux, you're

—TRANSCRIBED FROM DIGITAL RECORDING—

1 correct, that I can put it aside. I'm not going to allow  
2 it to influence my decision in the end.

3 And we can just go forward.

4 I think we were, I'll look back at my notes,  
5 with Mr. McCamey.

6 I remind you, sir, that you still are under  
7 oath. So thank you for coming back. The question I have  
8 in my notes refer to the fact the defendant drove himself,  
9 the witness came -- was alone with Mr. McCamey until Agent  
10 Panovich entered at the end.

11 Oh, no, I'm sorry. There's one more page here.  
12 So it goes on, actually the whole -- just the three  
13 versions with Ferrell at the end and then the witness told  
14 the defendant he was being evasive, inconsistent; the  
15 defendant said he wasn't interested in child porn. That's  
16 where we left off.

17 That's why I like to take breaks in between  
18 witnesses instead of in the middle of witnesses, but  
19 that -- we couldn't do that today.

20 MS. ROOHANI: And I just have one more question  
21 in that line of questioning.

22 I'm sorry, Your Honor. May I --

23 THE COURT: Oh, yes, go ahead.

24 MS. ROOHANI: Okay.

25

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MS. ROOHANI:

2 Q. In relation to the lars45 user name, did the  
3 defendant ever give you the same answer twice?

4 A. No, he didn't.

5 Q. How many answers totally did he give you?

6 A. There were three separate answers relating to that.

7 Q. Okay. Did the defendant confirm his address for  
8 you?

9 A. He did.

10 Q. And what was that?

11 A. 7080 Donald Nelson.

12 Q. And did he confirm who lives at the residence?

13 A. Yes.

14 Q. Who was that?

15 A. He said that he lived there with his husband, Frank  
16 Alfter, and someone who he identified as Kevin.

17 Q. Okay. Did he confirm who has access to the  
18 computers in his house?

19 A. He did.

20 Q. Who was that?

21 A. He said himself, Frank, and Kevin.

22 Q. Okay. Did you ask him if Frank or Kevin could have  
23 put the child pornography on to the computers?

24 A. I did.

25 Q. And what did he respond?



TRANSCRIBED FROM DIGITAL RECORDING

1 A. He said he did not believe that they did that.

2 Q. And did the defendant confirm that he uses  
3 peer-to-peer software?

4 A. Yes.

5 Q. Did he identify which peer-to-peer software he uses?

6 A. Not specifically to me, no.

7 MS. ROOHANI: And I'll pass the witness, Your  
8 Honor.

9 THE COURT: All right. Cross?

10 CROSS-EXAMINATION

11 BY MR. DURHAM:

12 Q. Agent McCamey, how long have you worked for the FBI?

13 A. A little over 17 years.

14 Q. Okay. And prior to that, were you in another branch  
15 of law enforcement?

16 A. I was a probation officer and a police officer for  
17 about six years prior to that.

18 Q. Okay. So your entire career has been spent in law  
19 enforcement?

20 A. That is correct.

21 Q. Okay. How many interrogations have you participated  
22 in during your career?

23 A. Many.

24 Q. Okay. If you had to estimate?

25 A. Hundreds.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Hundreds? Okay. And you've received specialized  
2 training in interrogation?

3 A. I have.

4 Q. Okay. And the primary purpose of your interrogation  
5 is to the elicit a confession; is that fair to say?

6 A. The primary reason is to get to the core truth.

7 Q. Okay. Now, given your background in law  
8 enforcement, would it be fair to say that when you are  
9 observing or interviewing somebody, your perceptions may be  
10 a little different than, say, my perceptions, or someone  
11 who doesn't have a law enforcement training or background?

12 A. In what context?

13 Q. Well, for example, the way that you view something  
14 or perceive something through your lens, based on your  
15 background, might be different than someone who has not  
16 ever been in law enforcement?

17 A. I like to think of myself as impartial.

18 Q. Okay.

19 A. As impartial as I possibly can be.

20 Q. Okay. Have you ever worked a nonlaw enforcement  
21 job?

22 A. I have.

23 Q. Okay. What was that?

24 A. I worked when I was -- when I was in college, I had  
25 a job for a human resources company where we worked with

—TRANSCRIBED FROM DIGITAL RECORDING—

1 the Americans with Disabilities Act. I went to different  
2 locations and did accessibility audits to provide them with  
3 ways they could make their stores accessible to persons  
4 with disabilities.

5 Q. Okay. Other than that, it's been strictly law  
6 enforcement?

7 A. There was some retail jobs when I was in high  
8 school.

9 Q. Okay. You've never worked for, say, a defense  
10 attorney; correct?

11 A. Correct.

12 Q. You've never worked on the other side, I guess I  
13 would say?

14 A. That's correct.

15 Q. Okay. Now, this interview that took place with  
16 Mr. Fuechtener, that was January 21st, 2016?

17 A. That is correct.

18 Q. Okay. And prior to that interview, you were given  
19 some background information as a foundation for your  
20 interview?

21 A. Yes.

22 Q. Now, some of the information that you were provided  
23 was that Mr. Fuechtener had denied being in possession of  
24 child pornography; correct?

25 MS. CARTIER-GIROUX: Objection.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: Objection, Your Honor. It calls  
2 for inadmissible -- the answer calls for inadmissible  
3 hearsay. The United States -- this is not a statement --  
4 it's a self-serving statement of the defendant. It's not  
5 admissible under Rule 810 -- (2)(A).

6 MR. DURHAM: It just goes to foundation for his  
7 basis before he conducted the interview.

8 THE COURT: So the question was what  
9 information -- repeat your question.

10 MR. DURHAM: He was -- my question was, as part  
11 of the information he was provided as a basis for his  
12 interview, one of those things was that Mr. Fuechtener  
13 denied having possession of child pornography.

14 THE COURT: All right. So you're not offering  
15 it for the truth of the matter asserted but rather to  
16 determine his state of mind. Is that --

17 MR. DURHAM: And his frame of reference --

18 THE COURT: -- what you're asking?

19 MR. DURHAM: -- before beginning the interview.

20 THE COURT: All right. So for that limited  
21 purpose, I'll allow it.

22 BY MR. DURHAM:

23 Q. Is that true?

24 A. Could you repeat the question?

25 Q. That Mr. Fuechtener -- what you were aware of --

—TRANSCRIBED FROM DIGITAL RECORDING—

1 made aware of and part of your frame of reference before  
2 you began this interview was that Mr. Fuechtener had denied  
3 being in possession of child pornography?

4 A. That's correct.

5 Q. Okay. You were also -- part of your frame of  
6 reference is based on the fact that there had been multiple  
7 devices, electronic devices found at the residence in  
8 question; correct?

9 A. Generically that there was multiple devices that had  
10 images of child pornography on them, yes.

11 Q. Okay. And Mr. Fuechtener indicated to you that he  
12 shared that residence with his husband?

13 A. Yes.

14 Q. As well as another -- an acquaintance; correct?

15 A. Yes.

16 Q. Now, as part of your frame of reference, were you  
17 provided information as to what particular devices were  
18 located in the residence?

19 A. No.

20 Q. Okay.

21 A. Other than the -- other than that there was a thumb  
22 drive that had documents relating to Mr. Fuechtener and  
23 child pornography. But nothing relating to specific  
24 devices.

25 Q. Okay. So but you were provided information

TRANSCRIBED FROM DIGITAL RECORDING

1 regarding a thumb drive?

2 A. Yes.

3 Q. And that thumb drive allegedly contained child  
4 pornography?

5 A. That's my -- was my understanding, yes.

6 Q. Okay. Were you made aware of where that thumb drive  
7 was located?

8 A. No.

9 Q. Okay. But you did ask Mr. Fuechtener some questions  
10 about the thumb drive; correct?

11 A. I did.

12 Q. Okay. Do you think it would have been important for  
13 you to know where that thumb drive was located?

14 A. Not necessarily in the context, it was more  
15 important for me to know that there were personal documents  
16 related to him on that thumb drive.

17 Q. Okay. And were you aware of what particularly those  
18 documents were?

19 A. No.

20 Q. Okay. Were you made aware that those -- that that  
21 thumb drive also had documents related to Frank Alfter on  
22 them?

23 A. No.

24 Q. You were aware that this residence is about 12,000  
25 square feet? It's a large residence?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       I knew it was a large residence. I had no idea how  
2 big.

3       Q.       Okay. And Mr. Fuechtener shared the residence with  
4 more than one person; correct?

5       A.       That's what he told me.

6       Q.       He also told you that there were guests that  
7 frequented the house?

8               MS. ROOHANI: Objection, Your Honor. He did not  
9 testify to that on direct.

10              MR. DURHAM: I'm asking him what Mr. Fuechtener  
11 told him.

12              MS. CARTIER-GIROUX: It's hearsay.

13              MS. ROOHANI: And it's hearsay.

14              THE COURT: And it would be hearsay if you're  
15 trying to use it for the truth of the matter asserted and  
16 it's a -- not an inculpatory admission but rather an  
17 exculpatory statement it would be hearsay.

18              MR. DURHAM: That's fine, Your Honor.

19 BY MR. DURHAM:

20       Q.       When you interviewed Mr. Fuechtener, he -- he drove  
21 to your office; correct?

22       A.       Yes.

23       Q.       Okay. He agreed to participate in this interview?

24       A.       Yes.

25       Q.       Did you find him to be cooperative?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       To the extent that he cooperated in the interview  
2 but not generally cooperative when it came to answering  
3 specific questions that he was asked.

4       Q.       Did you find that he was trying to be helpful?

5       A.       No.

6       Q.       During your interview?

7       A.       No.

8       Q.       No?

9       A.       No. I found that he was trying to be evasive.

10      Q.       Okay. And that's based on your training and  
11 experience as a law enforcement officer?

12      A.       And based on the fact that he changed his story  
13 relating to lars45 on three occasions, that he changed his  
14 story relative to whether he knew there was child  
15 pornography in the house on one occasion and the fact that  
16 when I asked him about the thumb drives specifically, he  
17 answered questions that should have been answered yes or no  
18 when, "I'm not interested in children."

19      Q.       Okay. And when you say "should have been answered  
20 yes or no," you didn't want an explanation for anything,  
21 you just wanted a yes or no answer?

22      A.       I repeatedly asked him if those images on that thumb  
23 drive were his or whether he was responsible for  
24 downloading them or keeping them. And his response to me  
25 was, every time, "I'm not interested in children."



—TRANSCRIBED FROM DIGITAL RECORDING—

1 I would tell him, "That's not the question I  
2 asked you."

3 And I would ask the question again. Again, he  
4 would tell me, "I'm not interested in children."

5 Q. Okay. And this was throughout the course of the  
6 interview; correct? How long did the interview take?

7 A. Three hours, approximately.

8 Q. Okay. And so for three hours you asked him the same  
9 questions over and over again?

10 A. I asked him similar questions over the course of the  
11 three-hour period relating to the child pornography.

12 Q. Okay. And you phrased some of those questions  
13 differently, I assume?

14 A. I don't know as though I asked him the same question  
15 every single time verbatim. I'm sure that they were at  
16 some point phrased --

17 Q. Okay.

18 A. -- somewhat differently.

19 Q. Now, this interview was not recorded; correct?

20 A. Correct.

21 Q. So we have to take your word for it; correct?

22 A. That's correct.

23 Q. Okay. And -- but you did take notes?

24 A. I did.

25 Q. Okay. And two pages of notes; is that fair to say?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       I believe so.

2       Q.       Okay. And these notes are what you used -- if I  
3 could show those to you. Does that look like your notes?

4       A.       It does, yes.

5       Q.       Okay. These notes were used to generate a  
6 typewritten report?

7       A.       They were used as a guide to generate a typewritten  
8 report, correct.

9       Q.       As a guide, okay.

10               So did you generate anything else during the  
11 interview besides these two pages of handwritten notes?

12       A.       Did I generate anything, any other written or  
13 recorded recording of this interview with Mr. Fuechtener?

14       Q.       Besides these two pages of handwritten notes?

15       A.       There is a demographic section that asks for name,  
16 date of birth, social security number, highest level of  
17 education, criminal history, things like that, that I type  
18 into the computer.

19       Q.       Okay. But as far as the substance of the interview,  
20 just these two pages of handwritten notes?

21       A.       That's correct.

22       Q.       And these were taken during the course of a  
23 three-hour interview?

24       A.       Yes.

25       Q.       Just these two pages?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Yes.

2 Q. Okay. And so is it your testimony that these two  
3 pages of handwritten notes are an accurate and true  
4 recording of your interview, the substance of your  
5 interview with Mr. Fuechtener?

6 A. They are a guide to help me write my report, yes.

7 Q. So they're just a guide?

8 A. Yes.

9 Q. Okay. And that report, the typewritten report,  
10 which is the formal report you prepared, was prepared the  
11 next day?

12 A. The next morning, yes.

13 Q. The next morning. You didn't prepare it right after  
14 the interview?

15 A. No, I did not.

16 Q. Okay. But you used these notes to prepare the  
17 report?

18 A. I did.

19 Q. Okay. And based on these notes you generated a  
20 three-page report?

21 A. That's correct.

22 Q. Typewritten?

23 A. (No audible response.)

24 Q. Now, did you have a chance to review your  
25 handwritten notes before you testified today?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. No.

2 Q. Do you recall the substance of your notes, more or  
3 less?

4 A. Do I recall the substance? The substance is related  
5 to what's in my report, yes.

6 Q. Okay. But you did review your report; right?

7 A. I did review my report, yes.

8 Q. Okay. You would agree with me that it's important  
9 that your notes be accurate?

10 A. That's correct.

11 Q. Okay. Because we don't have a recording, we don't  
12 have something objective that other people can look at,  
13 we're basing it entirely off of your notes; correct?

14 A. Correct.

15 Q. Okay. Do you recall writing down -- well, let me  
16 back up.

17 You were told that there was -- you were  
18 provided with an e-mail address of Lars 22 --  
19 larsschmidt22@hotmail.com?

20 A. Correct.

21 Q. And before you began the interview, part of the  
22 information you were given was that that e-mail address was  
23 somehow connected to lars45 and the GigaTribe account?

24 A. That's correct.

25 Q. Okay. Do you recall in your notes writing

—TRANSCRIBED FROM DIGITAL RECORDING—

1     larsschmidt22@gmail as that being the e-mail account that  
2     Mr. Fuechtener set up?

3     A.     Do I recall writing that? No.

4     Q.     If I showed that to you, would that refresh your  
5     recollection?

6     A.     I am not disputing that I probably wrote that.

7     Q.     Okay. Well, if I show it to you, would you like to  
8     look at that?

9     A.     Okay. If you'd like to show it to me.

10    Q.     You don't -- you don't --

11    A.     I'm not disputing that that's what's in my notes.

12    Q.     Okay. Well, you would agree with me that that's  
13    something that's an important fact, right, the e-mail  
14    address in this case?

15    A.     Gmail as opposed to Hotmail?

16    Q.     Correct. So that's an error on your part; correct?

17    A.     That's an error in my notes.

18    Q.     Okay.

19    A.     That's accurate.

20    Q.     And, once again, those notes were used as a basis  
21    to --

22    A.     But it's --

23    Q.     -- do your typewritten report?

24    A.     But my report reflects Hotmail.

25    Q.     So a large portion of your report then was based on

TRANSCRIBED FROM DIGITAL RECORDING

1 your memory alone?

2 A. No. Again, my notes were used as a guide. If I  
3 wrote Gmail in my notes, that was obviously a mistake. But  
4 it's used as a guide.

5 Q. This interview, you said, lasted about three hours;  
6 correct?

7 A. That's correct.

8 Q. And during that time did you notice Mr. Fuechtener  
9 being tired at all, sleepy?

10 A. Not that I -- not that I recall.

11 Q. Okay. Do you remember him -- do you remember if he  
12 had to be anywhere at a certain time?

13 A. Not that I recall.

14 Q. Do you remember him trying to cut the interview  
15 short?

16 A. The only thing I remember is near the end he asked  
17 to speak to Special Agent Panovich, which I allowed him to  
18 do.

19 Q. Okay. Have you ever interrogated a German national  
20 before?

21 A. Have I ever interviewed a German national? Not that  
22 I can recall.

23 Q. Okay. Have you ever interrogated somebody who is  
24 not from the United States?

25 A. I have conducted interviews from -- of persons that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 are not from the United States.

2 Q. Okay. Fair to say that Mr. Fuechtener's English is  
3 his second language? Was that your impression?

4 A. No, actually my impression was that he understood  
5 everything very well.

6 Q. That wasn't my question. Was it your understanding  
7 that English was his second language?

8 A. I understood that he was of German descent.

9 But when you ask me that question, that implies  
10 that he didn't understand the English language. He  
11 understood the English language. And I don't know how well  
12 he understands German. I assume fairly well.

13 Q. So you're aware he was a German national. He was  
14 born in Germany; correct?

15 A. Correct.

16 Q. Okay. You're saying that he understood English  
17 fairly well?

18 A. Yes.

19 Q. Okay. My question is, are you aware that English is  
20 his second language?

21 A. No.

22 Q. Okay. Would you agree with me that people from  
23 different cultures tend to express themselves  
24 differently --

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. -- than, say, you or I?

2 A. Yes.

3 Q. Okay. And people from different cultures, even when  
4 they speak English, may understand something differently  
5 than you or I?

6 A. On occasion, yes.

7 Q. For example, depending on how a question is phrased;  
8 is that fair to say?

9 A. That's fair to say, yes.

10 Q. Or maybe the tone in somebody's voice when they're  
11 saying something?

12 A. In certain occasions, yes.

13 Q. Now, you stated that you felt that Mr. Fuechtener  
14 was being evasive; correct?

15 A. That's correct.

16 Q. In your typewritten report do you recall how many  
17 times Mr. Fuechtener denied viewing child pornography?

18 A. Viewing child pornography?

19 Q. Do you recall how many times he denied it?

20 MS. ROOHANI: Your Honor, again, it's hearsay,  
21 calls for hearsay, self-serving statement made to Special  
22 Agent McCamey. It's not admissible.

23 THE COURT: Mr. Durham, what is the purpose of  
24 the question?

25 MR. DURHAM: I'll move on, Your Honor.



—TRANSCRIBED FROM DIGITAL RECORDING—

1           THE COURT: Well, is it to demonstrate -- or to  
2           impeach the defendant's -- or the witness's statement that  
3           the defendant was inconsistent?

4           MR. DURHAM: Your Honor --

5           THE COURT: Are you trying to show a consistency  
6           as opposed to the inconsistency?

7           MR. DURHAM: Your Honor, the report is replete  
8           with denials. And so the purpose of asking him if he  
9           recalls that is because he's basically -- what I'm getting  
10          from his testimony is that Mr. Fuechtener was waffling or  
11          was not completely answering the question.

12          And so the way I read the report is that he  
13          denied it multiple times.

14          THE COURT: All right. So it sounds like you're  
15          trying to ask him the question in order to elicit evidence  
16          of a consistency as opposed to inconsistency.

17          For that limited purpose, I'll allow you to do  
18          that. But I'm not allowing it as an actual statement for  
19          the truth of the matter asserted by the defendant, rather  
20          to permit you to have leeway to demonstrate whether, in  
21          fact, the defendant was inconsistent or actually provided  
22          some consistent answers for the weight of whatever that's  
23          going to be worth.

24          It might not be worth very much. But I'm going  
25          to let you go ahead and get into it.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   MR. DURHAM: Thank you, Your Honor.

2 BY MR. DURHAM:

3       Q.       Is that fair to say, that he made multiple denials  
4 to you?

5       A.       What he said multiple times was that he was not  
6 interested in children.

7       Q.       Okay.

8       A.       He said that multiple times.

9       Q.       You don't recall him saying multiple times that he  
10 was not interested in child pornography?

11      A.       Again, what I recall him saying multiple times was,  
12 "I'm not interested in children."

13      Q.       Okay. And that's just obviously, again, once again,  
14 based on your recollection?

15      A.       Correct.

16      Q.       Because we don't have a recording of this interview;  
17 correct?

18      A.       Not an audio recording.

19      Q.       Correct.

20      A.       We have a report.

21      Q.       Correct. Which is based on your two-page  
22 handwritten notes; correct?

23      A.       Correct.

24      Q.       Did you conduct any other interviews in reference to  
25 this investigation?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. No.

2 Q. Okay. Was this your only role in this  
3 investigation?

4 A. Yes.

5 Q. Okay. And, once again, other than your two-page  
6 handwritten report and the typewritten report, you did not  
7 generate any other reports; correct?

8 A. My two-page handwritten notes?

9 Q. Correct.

10 A. Correct.

11 MR. DURHAM: If I could have the Court's  
12 indulgence?

13 THE COURT: Sure.

14 MR. DURHAM: Pass the witness, Your Honor.

15 THE COURT: All right. I just had a question  
16 that I need to clarify as far as the Hotmail account on the  
17 notes, handwritten notes, versus the -- I'm sorry, no. It  
18 was actually -- I had written down the Gmail account was  
19 written in the handwritten notes, but the typed notes say  
20 Hotmail.

21 So did someone help you to draft your  
22 typewritten notes or review and edit the report before it  
23 was finalized?

24 THE WITNESS: My handwritten notes said Gmail,  
25 which is obviously an error. My report says Hotmail. So,

—TRANSCRIBED FROM DIGITAL RECORDING—

1 again, I used my notes as a guide.

2 I didn't realize I had written Gmail, but I  
3 knew -- I just did the interview, I did the report, I knew  
4 it was Hotmail. I knew that from -- from discussing it.  
5 And I wrote Gmail down, but my report reflects Hotmail.

6 THE COURT: So had you shown your handwritten  
7 notes to anyone --

8 THE WITNESS: No.

9 THE COURT: -- before you created the  
10 typewritten notes?

11 THE WITNESS: No.

12 THE COURT: Okay.

13 THE WITNESS: But I had reviewed -- I had  
14 reviewed the search warrant, I had reviewed it with him,  
15 and I didn't say Gmail to Mr. Fuechtener. I wrote it in my  
16 notes.

17 THE COURT: Okay. Thank you.

18 Ms. Roohani?

19 MS. ROOHANI: Just a few questions, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. ROOHANI:

22 Q. And I'm going to start where Judge Navarro just  
23 ended. I'd like to show you your handwritten notes. And  
24 this is Bates stamped number 421 and 422, which I believe  
25 Mr. Durham was also referring to.

TRANSCRIBED FROM DIGITAL RECORDING

1 MS. ROOHANI: Do you have any objection to me  
2 showing it to him?

3 MR. DURHAM: No.

4 MS. ROOHANI: Your Honor, may I approach?

5 THE COURT: Yes.

6 BY MS. ROOHANI:

7 Q. Go ahead and take a look at that and tell me how  
8 many times are the words "larsschmidt22@" with no suffix  
9 appear on that page -- on those two pages?

10 A. Once.

11 Q. Once. And is that on the first page or is it on the  
12 second page?

13 A. It's on the first page.

14 Q. And then where does the larsschmidt22@gmail appear?

15 A. On the second page.

16 Q. Top of the page, bottom of the page?

17 A. Towards the bottom half.

18 Q. Okay. When you generate notes when you're taking an  
19 interview, is that intended to be a transcript of that  
20 interview?

21 A. No.

22 Q. Is it intended to be a verbatim account?

23 A. No.

24 Q. Is it just there to refresh your recollection for  
25 when you go to generate your --

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Again --

2 Q. -- typewritten notes?

3 A. -- it's a guide to help me write my report.

4 Q. Okay. And when you spoke with Mr. Fuechtener, did  
5 you ask him about larsschmidt22@hotmail?

6 A. Yes.

7 Q. Did you ask him about larsschmidt22@gmail?

8 A. No.

9 Q. And that's based upon your recollection; it's also  
10 upon your report?

11 A. It's based upon my report on my recollection, the  
12 fact that I had studied the affidavit, spoke to Special  
13 Agent Panovich about it.

14 Q. So when you wrote those notes and you wrote Gmail,  
15 what is your explanation for why you wrote Gmail --

16 A. It's a mistake.

17 Q. It's a mistake?

18 A. An error on my part.

19 Q. Human error?

20 A. Yes.

21 Q. Okay. Mr. Durham asked you some questions about  
22 whether Mr. Fuechtener appeared tired.

23 Did Mr. Fuechtener ask to leave at any point in  
24 the middle of this interview?

25 A. No.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Did he ask to come back another day to complete the  
2 interview because he wasn't feel well --

3 A. No.

4 Q. -- he was tired, anything like that?

5 And then you answered -- you asked -- Mr. Durham  
6 asked you some questions about the yes or no question that  
7 you had asked Mr. Fuechtener.

8 Do you remember that yes or no question?

9 A. Yes. Oh --

10 Q. Where he gave you the answer that he wasn't  
11 interested in children?

12 A. Correct.

13 Q. And you indicated that you had asked a yes or no  
14 question.

15 Can you tell me that question again?

16 A. Yeah. I had asked him whether or not the images  
17 that were on the thumb drive were his, whether or not those  
18 images belonged to him, whether that thumb drive belonged  
19 to him.

20 Q. Okay. And you -- why were you intending to ask that  
21 question as a yes or no question?

22 A. Because it's a simple answer. It's a direct  
23 question, "Are they yours? Do they belong to you?"

24 Q. And if he had answered "yes," would that have been  
25 an admission?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes.

2 Q. And if he had answered "no," would that have been a  
3 denial?

4 A. Yes.

5 Q. But he didn't answer "yes," as an admission, or  
6 "no," as a denial?

7 A. That's correct.

8 Q. When you were speaking with Mr. Fuechtener, did he  
9 ask you at any point to repeat yourself or to explain  
10 yourself in different words because he didn't understand  
11 the --

12 A. No.

13 Q. -- questions he was asking you?

14 Did he speak with an accent?

15 A. He had a slight accent.

16 Q. Okay. Did he ask for a translator at any point?

17 A. No.

18 Q. And when you asked him that yes or no question and  
19 he told you, "I'm not interested in children," did you  
20 explain to him why you were asking that question?

21 A. I -- he would kind of go off on a tangent about the  
22 types of people that he was interested in, including the  
23 SWAT guys that came in the house.

24 And I would bring him back around. I would say,  
25 "That's not what I'm interested in. That's not the



—TRANSCRIBED FROM DIGITAL RECORDING—

1 question I asked you. I'm asking you about these images  
2 that are on the thumb drives." And again he would answer  
3 me.

4 Q. And did you indicate to him that you were expecting  
5 either a yes or no answer from that?

6 A. I told him that -- I told him that he was being  
7 evasive because he was not directly answering my  
8 question --

9 Q. And --

10 A. -- that -- yes, that it was essentially a yes or no  
11 question.

12 Q. And when you told him he was being evasive, what did  
13 Mr. Fuechtener say to you?

14 A. He told me that he was choosing his words carefully  
15 because he did not want anyone to get in trouble, and he  
16 didn't want to lose his job.

17 Q. Okay.

18 MS. ROOHANI: A moment's indulgence, Your Honor.  
19 Your Honor, I'd pass the witness.

20 THE COURT: Recross?

21 RECROSS-EXAMINATION

22 BY MR. DURHAM:

23 Q. Agent, so today you're testifying 10 months late --  
24 after this interview occurred; correct?

25 A. Correct.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. And are you testifying just based on your  
2 recollection?

3 A. And refreshment from my report.

4 Q. Okay. And that report was, once again, based on  
5 your two-page handwritten notes; correct?

6 A. In part.

7 Q. Okay. The other part was based on your  
8 recollection?

9 A. Of the interview that I conducted 12 hours before I  
10 did the report.

11 Q. Okay. You took the handwritten notes on the 21st;  
12 you prepared the report on the 22nd?

13 A. Correct.

14 Q. Okay. You would agree with me that there's -- the  
15 report contains additional information that is not  
16 contained in your handwritten report; correct?

17 A. That's correct.

18 Q. Okay. And that's all just based off of your  
19 recollection?

20 A. Again, notes -- the notes are there as a guide, and  
21 it's based on, yes, the recollection of the interview I did  
22 12 hours earlier.

23 Q. Okay. The notes are not verbatim, correct, of  
24 what -- word for word of what --

25 A. They are not verbatim, that is correct.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. So what you're writing down here, we just  
2 have to take your word for it; correct? They're not  
3 verbatim?

4 A. (No audible response.)

5 Q. Okay. So it's basically what you wrote down as far  
6 as what you were perceiving, what you were viewing, your  
7 frame of reference as far as this interview goes; correct?

8 A. So the notes are based on what he's telling me.

9 And when I say they're not verbatim, they're not  
10 word for word; otherwise, we'd have 15 pages of notes or  
11 somewhere in that area.

12 Q. Okay. Well, these are serious charges, aren't they?

13 A. Yes, they are.

14 Q. Wouldn't it important to have these reports as  
15 accurate and complete as possible?

16 A. And they are accurate.

17 Q. If you had -- you just stated that if you had done  
18 it word for word it would have taken about 15 pages;  
19 correct?

20 A. That's -- that's probably if I had done verbatim,  
21 word for word, everything that he said.

22 Because you got to remember, he's denying,  
23 denying, denying. He's talking -- I'm sorry. He's talking  
24 on tangent, he's talking on tangent, I'm bringing him back  
25 to the issue. He's denying, he's denying, he's denying.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 He's going off on a tangent, I'm bringing him back to the  
2 issue.

3 That's the way the interview went for three  
4 hours.

5 Q. Okay. So it would have been too much to ask for you  
6 to write down verbatim how the interview went?

7 A. I have never written verbatim notes of how --  
8 verbatim notes of an interview. I've never taken absolute  
9 verbatim notes of an interview.

10 Q. Okay. So your two pages of handwritten notes were  
11 basically what you thought was relevant to this interview?

12 A. My two pages of handwritten notes are the  
13 information related to the child pornography issues and  
14 related to the trading of -- or the sharing of the images  
15 relating to the images that were at the house relating to  
16 his responses to the images that were at the house relating  
17 to the lars45 and the larsschmidt e-mail accounts, the  
18 pertinent information relating to what Mr. Fuechtener has  
19 been charged with.

20 Q. So Mr. Fuechtener answered some of your questions;  
21 correct?

22 A. He did, yes.

23 Q. And you were taking these notes contemporaneously  
24 with his answers?

25 A. I was taking the notes, some of them

TRANSCRIBED FROM DIGITAL RECORDING

1 contemporaneously, some of them as -- as I recalled what he  
2 told me.

3 So not all of them are being taken  
4 contemporaneously with the interview itself.

5 Q. And then you waited until the following day to  
6 prepare your typewritten report?

7 A. Yes.

8 Q. Okay. Would you agree with me that this would have  
9 been a lot easier and more complete if this interview had  
10 just been recorded?

11 A. I absolutely agree.

12 MR. DURHAM: Pass the witness.

13 THE COURT: My memory is that you stated the  
14 interview started at 1:30; is that right?

15 THE WITNESS: Correct.

16 THE COURT: And you said it took a couple of  
17 hours?

18 THE WITNESS: Roughly three.

19 THE COURT: What time does your shift end?

20 THE WITNESS: My shift? What time do I usually  
21 go home?

22 THE COURT: Yeah.

23 THE WITNESS: 5:00, 5:30.

24 THE COURT: All right. And so the next day when  
25 you came back to work, that's when you typed up the report?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE WITNESS: Right.

2 THE COURT: And did you talk to anyone or share  
3 your notes with anyone before you typed up the report?

4 THE WITNESS: I did not share my notes. I  
5 discussed with Special Agent Panovich what he had told me  
6 during the interview.

7 THE COURT: Do you recall if she corrected you  
8 on maybe some misunderstanding as to whether it was Gmail  
9 or Hotmail?

10 THE WITNESS: No. And, again, my recollection  
11 is there was no misunderstanding other than I wrote Gmail  
12 down in my notes.

13 THE COURT: Do you have a Gmail account?

14 THE WITNESS: I used to, yeah.

15 THE COURT: Okay.

16 Go ahead, Ms. Roohani.

17 MS. ROOHANI: I just of one question.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. ROOHANI:

20 Q. The statements that Mr. Fuechtener gave you that  
21 day, are they correctly and accurately reflected in your  
22 report?

23 A. Yes.

24 Q. Your typewritten report?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: That's it, Your Honor.

2 THE COURT: Anything else, Mr. Durham?

3 MR. DURHAM: No, thank you, Your Honor.

4 THE COURT: Thank you very much, Mr. McCamey,  
5 for coming in. And just be careful to only take with you  
6 whatever documents you brought with you. Yeah, leave the  
7 other evidence here.

8 Would the government like to call its next  
9 witness.

10 MS. ROOHANI: We would, Your Honor. And may we  
11 ask that Mr. McCamey be released so that -- for his  
12 purposes of --

13 THE COURT: Yeah. He's on the defendant's list.  
14 Did the defense intend to recall him for any  
15 purpose?

16 MR. DURHAM: No, Your Honor.

17 THE COURT: All right. Yes, he'll be released.

18 MS. ROOHANI: Thank you.

19 (The witness was excused.)

20 MS. ROOHANI: At this time, the United States  
21 calls Josh Rodriguez.

22 COURTROOM ADMINISTRATOR: Please raise your  
23 right hand.

24 You do solemnly swear that the testimony you  
25 shall give in the cause now before the Court shall be the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 truth, the whole truth, and nothing but the truth, so help  
2 you God?

3 THE WITNESS: Yes.

4 COURTROOM ADMINISTRATOR: Thank you, sir. You  
5 may be seated.

6 Please state and spell your full name for the  
7 record.

8 THE WITNESS: And middle name?

9 COURTROOM ADMINISTRATOR: First and last.

10 THE WITNESS: Okay. Joshua Rodriguez,  
11 J-o-s-h-u-a. Rodriguez is R-o-d-r-i-g-u-e-z.

12 MS. CARTIER-GIROUX: May I inquire?

13 THE COURT: Yes.

14 MS. CARTIER-GIROUX: Thank you.

15 JOSHUA RODRIGUEZ

16 called as a witness on behalf of the  
17 Government, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. CARTIER-GIROUX:

20 Q. Sir, where do you work?

21 A. At the Henderson Police Department for the Henderson  
22 Detention Center.

23 Q. How long have you worked there?

24 A. Come April, it will be seven years.

25 Q. And what is your position?



—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       I am the intelligence and classification officer for  
2 the Henderson Jail.

3       Q.       Okay. And at the Henderson Jail, are you aware  
4 whether or not the defendant, Mr. Fuechtener, is currently  
5 being held there?

6       A.       Yes, he is.

7       Q.       Okay. And when there is a person at the jail, are  
8 they able to make telephone calls?

9       A.       Yes.

10      Q.       And are they assigned any kind of number or code  
11 when they make a phone call?

12      A.       Yes. They have an inmate ID number with a PIN they  
13 choose for security purposes.

14      Q.       And what do they have to do with the inmate ID  
15 number when they make a phone call?

16      A.       They have to enter in their inmate ID number  
17 followed by their PIN when they make phone calls.

18      Q.       Okay. And does the Henderson Detention Center keep  
19 records of the calls?

20      A.       Yes. It's through a telephone company for  
21 facilities for jails and prisons called Securus.

22      Q.       Do they not only make a record of the -- that the  
23 call took place, but do they record those calls?

24      A.       Yes, they do.

25      Q.       Can you take a look in that binder in front of you

—TRANSCRIBED FROM DIGITAL RECORDING—

1     what's been marked -- and it will be on the tab. Look on  
2     tab 25. It will be the first -- the first exhibit would be  
3     25A for identification.

4     A.     All right.

5     Q.     Okay. Can you actually take the disk out for me.

6     A.     Okay.

7     Q.     I'm going to have to use it again. Okay. Can you  
8     turn to tab 26A. And also remove that exhibit. And also  
9     27A.

10           Now, prior to you coming in to testify, did you  
11     review what is contained on 25A, 26A, and 27A marked for  
12     identification?

13     A.     Yes.

14     Q.     And what are -- what is 25A, 26A, and 27A?

15     A.     They are telephone calls made from the defendant's  
16     inmate telephone account at the Henderson Detention -- from  
17     the Henderson Detention Center.

18     Q.     Okay. These calls that are contained on 25A, 26A,  
19     27A, are they calls kept and preserved in the ordinary  
20     scope of the business of Henderson detention facility?

21     A.     Yes.

22     Q.     Is it a regular part of the business of the  
23     Henderson detention facility to keep and maintain such  
24     telephone calls?

25     A.     Yes, through the Securus telephone company.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And are those calls and were those calls kept within  
2 the custody and control of the Henderson Detention Center?

3 A. Yes.

4 Q. And did you, in fact, provide those calls to the  
5 special agent in this case, Mari Panovich?

6 A. Yes. I reviewed the telephone calls, and I even  
7 printed up a telephone summary report of when the calls  
8 were made and that they were made from the defendant's  
9 telephone account and that they originated from the  
10 Henderson Jail.

11 Q. And did, in fact, you verify on each of these calls  
12 the PIN number was associated with the defendant while  
13 housed at the facility?

14 A. Yes.

15 MS. CARTIER-GIROUX: I would ask that 25A, 26A,  
16 and 27A just remain marked for identification at this point  
17 in time. They are certified records, Your Honor. I'm  
18 going to call Special Agent Panovich, because the calls are  
19 in a foreign language, to identify the voices. So subject  
20 to connection.

21 So at this time I'm not offering them. But they  
22 are certified -- we're offering them as certified business  
23 records. I still have to authenticate them further since  
24 they are not in English.

25 THE COURT: All right. Any objection so far?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MR. DURHAM: No.

2 THE COURT: Okay. Go ahead.

3 MS. CARTIER-GIROUX: I don't have any further  
4 questions for the witness.

5 THE COURT: All right.

6 Any cross?

7 MR. SANFT: Your Honor, we have no questions.

8 THE COURT: All right. Thank you very much for  
9 coming in this afternoon. You're all done.

10 Is he released as well? Or is he going to be  
11 playing --

12 MS. CARTIER-GIROUX: Can he just wait, and then  
13 we can release him after if no one needs to recall him?

14 THE COURT: All right. Okay. So you're not  
15 released yet. We might need to recall you. But just be  
16 careful on your way down with the steps.

17 MS. CARTIER-GIROUX: I just want to wait until  
18 they're actually entered.

19 THE COURT: Right. We still need you to wait  
20 outside because of the Exclusionary Rule.

21 These are all the exhibits; right? He can leave  
22 these all here.

23 MS. CARTIER-GIROUX: Yes.

24 Your Honor, I'm going to call Special Agent Mari  
25 Panovich for the specific purpose of just finishing up

—TRANSCRIBED FROM DIGITAL RECORDING—

1 the -- to enter the calls into evidence.

2 THE COURT: Okay.

3 MS. CARTIER-GIROUX: At this time, the United  
4 States calls Mari Panovich.

5 THE COURT: I just wasn't sure whether you need  
6 to ask him about the recording, whether there's notice  
7 given before -- that the phone is recorded, but I see that  
8 it's in the transcript.

9 MS. CARTIER-GIROUX: Yes.

10 THE COURT: So that's what was my delay, was I  
11 was trying to double check and make sure we had everything  
12 we needed.

13 COURTROOM ADMINISTRATOR: Please raise your  
14 right hand.

15 You do solemnly swear that the testimony you  
16 shall give in the cause now before the Court shall be the  
17 truth, the whole truth, and nothing but the truth, so help  
18 you God?

19 THE WITNESS: Yes, I do.

20 COURTROOM ADMINISTRATOR: Thank you. Please  
21 state and spell your full name for the record.

22 THE WITNESS: Sure. Thank you. Mari Panovich,  
23 M-a-r-i P-a-n-o-v-i-c-h.

24

25

TRANSCRIBED FROM DIGITAL RECORDING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MARI PANOVICH

called as a witness on behalf of the  
Government, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CARTIER-GIROUX:

Q. Special Agent Panovich, before coming in here to  
testify, did you have an opportunity to listen to what --  
the calls contained in 25A, 26A, and 27A for  
identification?

A. Yes, I did.

Q. And are you familiar with the voices of the  
individuals in those three calls?

A. Yes, I am.

Q. Okay. With regard to the defendant, are you  
familiar with the defendant's voice?

A. Yes, I am.

Q. Have you ever interviewed him?

A. Yes, I have.

Q. Have you spoken to him?

A. Yes, I have.

Q. Have you listened to other jail calls, other than  
these three, purportedly by the defendant with regard to  
his inmate PIN number?

A. Yes, I have.

Q. How many calls do you think that there are from the

TRANSCRIBED FROM DIGITAL RECORDING

1 defendant that have been available to you?

2 A. Hundreds.

3 Q. Okay. Are the calls in different languages?

4 A. Yes, they are.

5 Q. What languages?

6 A. German and English.

7 Q. Okay. And even in the calls with -- that are spoken  
8 in German, are you familiar with the tone of the  
9 defendant's voice and the sound of his voice?

10 A. Yes, I am.

11 Q. Do you recognize the person making the calls in 25A,  
12 26A, and 27A for identification?

13 A. Yes, I do.

14 Q. Who do you recognize that person to be, based on  
15 your familiarity?

16 A. As the defendant.

17 Q. In 25A, 26A, 27A, the person whom the defendant is  
18 speaking to is -- are you familiar with that person's  
19 voice?

20 A. Yes, I am.

21 Q. Are you familiar with an individual named Frank  
22 Alfter?

23 A. Yes.

24 Q. Have you spoken to Frank Alfter?

25 A. Yes, I have.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Have you interviewed Frank Alfter?

2 A. Yes, I have.

3 Q. Have you listened to other phone calls or jail calls  
4 with -- from the defendant, where the other person on the  
5 line appeared to you to be the same voice?

6 A. I'm sorry. Say that again.

7 Q. Same voice that the defendant is talking to in these  
8 three calls?

9 A. Yes.

10 Q. Okay. During the phone calls that you've listened  
11 to, where you were able to understand, did the defendant  
12 ever address the other individual whose voices are recorded  
13 in 25A, 26A, and 27A by name?

14 A. Yes, he does.

15 Q. What does he call him?

16 A. Frank.

17 Q. The person who the defendant is speaking to in 25A,  
18 26A, 27A, based on your familiarity with Frank Alfter's  
19 voice, based on your listening to the hundreds of jail  
20 calls, based on defendant calling this individual Frank,  
21 who do you believe that person to be?

22 A. Frank Alfter.

23 MS. CARTIER-GIROUX: At this time I would offer  
24 25A, 26A, 27A into evidence.

25 THE COURT: Any objection?



—TRANSCRIBED FROM DIGITAL RECORDING—

1                   MR. MARCHESE: Yes, Your Honor. We would ask  
2 for more foundation and the Court to withhold allowing this  
3 into evidence until the proper foundation is laid; namely  
4 these chats -- or these recordings are in German, is our  
5 understanding.

6                   THE COURT: I'm not sure I understand the  
7 objection. Are you objecting --

8                   MR. MARCHESE: Well, there's no foundation. I  
9 don't think -- believe they've laid the proper foundation  
10 yet. So we're --

11                  THE COURT: She said she already listened to the  
12 recordings, she's spoken to both the defendant and his  
13 husband, she recognizes their voices, and they sound the  
14 same as the voices. So --

15                  MR. MARCHESE: Correct. But I still think that  
16 there's another level, which is there's still a hearsay  
17 issue to come in.

18                  So if we allow -- if we don't object -- I mean,  
19 I'm not disputing that Ms. Panovich knows my client's  
20 voice, knows Mr. Alfter's voice. That's not my objection.

21                  My objection is if we allow it to come in at  
22 this point, then we've obviously waived our right. So  
23 we're going to take the position that these are hearsay  
24 statements; and some may be allowed in and some may not,  
25 but I don't think this is the time for us to lodge that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 objection.

2 So we're -- at this point, that's where we're  
3 at. We don't think there's a foundation. Because we're  
4 going to have hearsay issues down the road. And if we  
5 allow it in now, it's in evidence. We can't unring the  
6 bell.

7 THE COURT: All right. Well, the defendant's  
8 statement wouldn't be hearsay; right? So are you saying  
9 that the other person's statements would be hearsay?

10 MR. MARCHESE: We're saying all the statements  
11 would be hearsay and they all need to meet hearsay  
12 objections. And some may and some may not. But we're not  
13 there yet.

14 THE COURT: Do you want to respond,  
15 Ms. Cartier-Giroux, for the record?

16 MS. CARTIER-GIROUX: Our intention is to  
17 introduce portions of these statements that are nonhearsay.  
18 They are statements by a party opponent.

19 They come in. Whether they're inculpatory,  
20 exculpatory, they come in. They're his statements. We can  
21 put them in.

22 We're not going to put the entire -- if you  
23 don't want to put the entire exhibit in in German, that's  
24 fine. We'll put in the portions through the translator.

25 But the basis of them coming in is established.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 It's his voice. The calls are certified records -- well,  
2 certified -- they're business records. They're not  
3 certified, they're business records, which we established  
4 by Mr. Rodriguez.

5 So the contents of the calls can come in. I'm  
6 okay with not putting the actual full disks in. But we'd  
7 like now to be able to admit the statements within the  
8 calls through the translator. I think we've established a  
9 basis for it.

10 THE COURT: All right. So if I -- and I agree  
11 with you that the defendant's statements are statements by  
12 a party opponent and they're not hearsay and they are  
13 admissible.

14 I guess the question is whether the statements  
15 by Mr. Frank Alfter would be hearsay or not --

16 MS. CARTIER-GIROUX: Right.

17 THE COURT: -- since he's not on the stand --

18 MS. CARTIER-GIROUX: Well, they --

19 THE COURT: -- which is usually the case.

20 MS. CARTIER-GIROUX: They would come in anyway  
21 at this point in time with regard to the defendant's  
22 statements because his statements are in response to some  
23 of the statements made by Mr. Alfter.

24 The Court can make a decision at the end of our  
25 proof, at the end of our final witnesses as to whether or

—TRANSCRIBED FROM DIGITAL RECORDING—

1 not the Court finds that Mr. Alfter is, in fact, an  
2 unindicted co-conspirator in this case.

3 And part of that proof is going to come in, we  
4 believe, through those calls. There's not a *Crawford* issue  
5 with those calls.

6 So at this point in time we don't want you to  
7 rule on whether or not Mr. Alfter's statements come in as  
8 nonhearsay.

9 But we would like to be able to introduce the  
10 calls because we have established that they are relevant,  
11 that they are admissible, at least as nonhearsay as to  
12 Mr. Rouven's phone calls, and we have established that they  
13 are, in fact, calls made by him kept in the regular course  
14 of business by the Henderson Detention Center.

15 THE COURT: All right. They'll be admitted as  
16 business records.

17 (Government's Exhibits 25A, 26A, 27A  
18 received.)

19 MR. MARCHESE: And just to be clear, Your Honor,  
20 I just wanted to lay my found -- my record, and I think I  
21 already have, that we are objecting at this point that many  
22 of these statements could, in fact, be hearsay.

23 THE COURT: I'm not sure how the defendant's  
24 statements could be hearsay, but depending on whether or  
25 not Mr. Alfter is a co-conspirator or not, then his

TRANSCRIBED FROM DIGITAL RECORDING

1 statements may or may not be hearsay. But we'll get to  
2 that at the end.

3 MS. CARTIER-GIROUX: Judge, I apologize. I have  
4 one other question.

5 THE COURT: Sure.

6 BY MS. CARTIER-GIROUX:

7 Q. While you're up there, could you take a look at 28A  
8 for identification.

9 And this relates to the translator. We want to  
10 do it at the same time, that's why I'm asking these  
11 questions now.

12 Do you recognize 28A?

13 A. Yes, I do.

14 Q. What is 28A for identification?

15 A. It is a GigaTribe chat.

16 Q. Okay. Is that -- where does that GigaTribe chat  
17 come from?

18 A. It's from evidence item 1B3.

19 Q. Okay. And did that GigaTribe chat come -- was that  
20 extracted from IEF -- it's from 1B3; correct?

21 A. Yes, correct.

22 Q. IEF report 1B3, which has already been admitted as  
23 Exhibit 13?

24 A. Yes.

25 Q. Okay. And what language are those GigaTribe chats

—TRANSCRIBED FROM DIGITAL RECORDING—

1 in?

2 A. In German.

3 MS. CARTIER-GIROUX: At this time I'd offer 28A  
4 in evidence.

5 THE COURT: Any objection to 28A?

6 MR. MARCHESE: No, Your Honor.

7 THE COURT: All right. 28A will be admitted.

8 (Government's Exhibit 28A received.)

9 MS. CARTIER-GIROUX: I don't have any other  
10 questions. Thank you.

11 THE COURT: Any cross?

12 MR. MARCHESE: No, Your Honor.

13 THE COURT: All right.

14 Thank you, Ms. Panovich. I think you'll be  
15 back. But thank you for now.

16 THE WITNESS: Thank you.

17 (The witness was excused.)

18 THE COURT: Did you want to call another  
19 witness?

20 MS. ROOHANI: Yes, Your Honor. I'm sorry. I  
21 didn't hear you.

22 We would call Philip Schapery.

23 Judge, may we release Mr. Rodriguez now, since  
24 the call's been admitted? Can we release him? Or do you  
25 want him to stay?

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   THE COURT: Yeah, well, I think we can release  
2 him.

3                   MS. ROOHANI: Thank you. We just don't want him  
4 sitting here all day, Your Honor.

5                   THE COURT: Go ahead.

6                   COURTROOM ADMINISTRATOR: Please raise your  
7 right hand.

8                   You do solemnly swear that the testimony you  
9 shall give in the cause now before the Court shall be the  
10 truth, the whole truth, and nothing but the truth, so help  
11 you God?

12                  THE WITNESS: I do.

13                  COURTROOM ADMINISTRATOR: Thank you, sir. You  
14 may be seated.

15                  Please state and spell your first and last name  
16 for the record.

17                  THE WITNESS: Philip Schapery, S-c-h-a-p-e-r-y.

18                  MS. ROOHANI: And, Your Honor, I'll note  
19 Mr. Schapery is battling a little bit of a cough, so -- I  
20 believe that he has it under control. But there's water up  
21 there if you need it at any time. If you need to take a  
22 break, just let us know.

23                  THE COURT: There's water right there.  
24  
25

TRANSCRIBED FROM DIGITAL RECORDING

1

PHILIP SCHAPERY

2

called as a witness on behalf of the

3

Government, was examined and testified as follows:

4

DIRECT EXAMINATION

5

BY MS. ROOHANI:

6

Q. Mr. Schapery, who is your employer?

7

A. The FBI.

8

Q. And how long have you been working for the FBI?

9

A. Ten years.

10

Q. What are your current duties and responsibilities?

11

A. I translate documents and audio, and sometimes I do

12

interpreting.

13

Q. And is that -- into what language, to and from which

14

languages?

15

A. English and German.

16

Q. Have you held any other positions within the FBI?

17

A. No, ma'am.

18

Q. Okay. Tell us a little bit about your formal

19

education.

20

A. I started learning German back in high school, where

21

I took four years of German. At the same time when I was

22

in high school, I was an exchange student in Germany.

23

The following year I also went back to Germany

24

for the summer with some Texas A&M students, and we went

25

through a six-week course at the Goethe Institut at Passau,



—TRANSCRIBED FROM DIGITAL RECORDING—

1 Germany.

2 Then after high school I attended Texas A&M  
3 studying electrical engineering, but I also took 24 credit  
4 hours of German at that time.

5 Q. Okay. Did you receive a minor degree in German?

6 A. Texas A&M didn't give minor degrees at the time.  
7 But I had enough hours to be close to a minor at least.

8 Q. Did you take any FBI courses related to translation?

9 A. When you first start, you take what they call LAST  
10 training, language analyst specialist training.

11 And subsequent to that, I've taken two  
12 interpreting courses at the FBI.

13 Q. Okay. For how many years have you been speaking  
14 German?

15 A. Over 40.

16 Q. How many times have you traveled to Germany?

17 A. Somewhere between 20 and 30 times.

18 Q. And were those visits emersion into the German  
19 culture and German language?

20 A. Yes.

21 Q. How do you maintain your skills in the German  
22 language?

23 A. I've taken continuing education courses, like at the  
24 German-Texan Heritage Society, for seven years.

25 I also watch a lot of German satellite

TRANSCRIBED FROM DIGITAL RECORDING

1 television. I read German a lot. Plus I translate it  
2 every day at work.

3 Q. Okay. Have you previously testified in court as a  
4 German-to-English translator?

5 A. No.

6 Q. And have your translations been used in court  
7 before?

8 A. Yes.

9 Q. And if you haven't testified, I'm assuming that  
10 those translations have been stipulated to; is that  
11 correct?

12 A. That's correct.

13 Q. Okay. Do you know about how many times your  
14 translations have been used in court?

15 A. I don't know exactly because we're not always  
16 informed when we're used.

17 Q. Do you have a ballpark?

18 A. There were several times specifically I know they  
19 were stipulated to. And beyond that, I heard they were  
20 going to court, but I never heard anything back.

21 Q. Okay. Does the FBI have any quality control  
22 measures for translations?

23 A. Yes. When you're a new linguist, your first 40  
24 hours is quality reviewed by a senior linguist. And then  
25 from that time forward, every year samples of your work are

—TRANSCRIBED FROM DIGITAL RECORDING—

1 quality reviewed by another linguist.

2 Q. Have you ever not passed one of those quality  
3 reviews?

4 A. Yes. The very first one that I went through 10  
5 years ago I failed because of one word, which I could not  
6 read properly because it was a fax of a fax and tiny print,  
7 and there was a letter "I" in there that completely changed  
8 the meaning of the word, so I failed because of that one  
9 word.

10 Q. And how many words do you have to misread to come up  
11 with a nonpassing score?

12 A. You could fail just because of one word if that word  
13 is important.

14 Q. Okay. Can you tell us about that one word that  
15 caused you to fail that particular quality review?

16 A. Yeah. The German word was *aktien*, a-k-t-i-e-n, and  
17 it looked to me like the word was *akten*, which means files,  
18 like you put in a file cabinet.

19 So I thought somebody had stolen someone's  
20 files, when they had stolen shares of stock.

21 Q. So you did not see the "I" --

22 A. I couldn't make out the "I" because it was smeared.

23 Q. Okay. Have you ever not passed since that time?

24 A. I've never not passed since then.

25 Q. And how many times -- I think you mentioned once a

TRANSCRIBED FROM DIGITAL RECORDING

1 year that the quality review comes up?

2 A. That's right.

3 Q. Have you passed a quality review this year?

4 A. Yes.

5 Q. And when you said you didn't pass, that was 10 years  
6 ago?

7 A. Yes, 10 years ago.

8 Q. Okay. And I'm assuming you've received additional  
9 training since that time?

10 A. Yes.

11 Q. Okay. Sometimes when you are working with the FBI,  
12 are you asked to review other people's translations?

13 A. Yes.

14 Q. And what do you look at when you're reviewing  
15 somebody else's translation?

16 A. First thing is you're looking for mistranslations to  
17 correct, you are looking for awkward translations that  
18 don't quite sound right and could be expressed more  
19 clearly, and you're looking for grammatical and spelling  
20 errors.

21 Q. Okay. So when you review an audio recording, would  
22 you play the audio recording if you're reviewing somebody  
23 else's work?

24 A. Yes.

25 Q. And you review their translation?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Correct.

2 Q. And then do you change every error or just  
3 significant errors?

4 A. I change errors. I change errors that are certainly  
5 pertinent errors. If it's just a matter of expression  
6 where I could say one where he said another, I don't  
7 necessarily change that if it's clear what it means.

8 Q. Okay. And do you do a verbatim translation, word  
9 for word?

10 A. At the FBI we're taught that we don't do  
11 word-for-word translations, we do meaning-for-meaning  
12 translations.

13 Q. And what is the purpose for doing a  
14 meaning-for-meaning translation as opposed to  
15 word-for-word?

16 A. Because if you try to do a word-for-word translation  
17 from German into English, you would come out with a bad  
18 translation that's hard to understand or inaccurate.

19 Q. Is that due to certain terms of phrase that might  
20 exist in German that don't exist in English?

21 A. Yes, that's exactly right.

22 Q. Okay. You did some translations for this case; is  
23 that correct?

24 A. Yes.

25 Q. Okay. When you translated the -- what were those

—TRANSCRIBED FROM DIGITAL RECORDING—

1 things that you translated in this case?

2 A. These were jailhouse calls.

3 Q. Okay. Did you also translate or review a  
4 translation of a chat in this case?

5 A. Yes.

6 Q. Okay. When you translated the jail calls, were  
7 there certain things in the jail calls that made it  
8 difficult for you to do the translation or cause you to go  
9 back and double check your work?

10 A. Yes. Any time you're translating audio, there are  
11 times when people, if there's two people, they'll be  
12 talking over each other. Sometimes they'll speak quickly,  
13 sometimes they'll speak softly, sometimes they'll mumble;  
14 so you have to replay sections over and over at times to  
15 hear exactly what they said.

16 Q. Okay. And when you -- do you review the same audio  
17 over and over again to try to get to the correct  
18 translation?

19 A. Yes, I do.

20 Q. Okay. Were there any things in the -- in these  
21 particular jail calls that you listened to where there  
22 wasn't a translation issue, where you just had difficulty  
23 hearing what was going on?

24 A. Yes.

25 Q. And how did you indicate those in your specific

TRANSCRIBED FROM DIGITAL RECORDING

1 translations?

2 A. If -- if you cannot hear it at all, if there's  
3 just -- you listen to it again and again, you don't  
4 understand it, because of mumbling or whatever, you can put  
5 in brackets, and you put "UI," which is unintelligible.

6 Q. And if there's overlapping voices, how do you  
7 indicate that?

8 A. You put "OV" within brackets.

9 Q. Okay. Was there anything in these particular  
10 translations that left you scratching your head, wondering  
11 what was going on?

12 A. Occasionally. And when that happens, if I can make  
13 out what's being said but I don't understand it, I'll check  
14 the dictionary or consult a colleague.

15 Q. Okay. And did you have to do that in this case?

16 A. Yes.

17 Q. And after you consulted a colleague and you  
18 consulted the dictionary, that is when you created your  
19 final translation?

20 A. That's right.

21 Q. Okay. The majority of -- if -- I assume that you  
22 reviewed the translations in this case; is that correct?

23 A. Yes.

24 Q. And when you reviewed those, do you remember, on  
25 average, the number of grammatical or punctuation errors

—TRANSCRIBED FROM DIGITAL RECORDING—

1     that you may have changed?

2     A.     The number, they were just occasional, sporadic.

3     Q.     Okay. And in terms of changing a word here or  
4     there, sporadic as well?

5     A.     Sporadic, yes.

6     Q.     Okay.

7             MS. ROOHANI: Your Honor, I would ask for  
8     permission to tender Mr. Schapery as an expert in  
9     German-to-English translation.

10            THE COURT: Any objection?

11            MR. SANFT: Your Honor, I don't know if we can  
12     at this point certify him as an expert. He's never  
13     testified in court before.

14            I do understand that maybe among FBI translators  
15     he would be considered to be a -- proficient at his job.  
16     But with regards to his ability to testify here as an  
17     expert, we haven't heard anything about him either being a  
18     teacher or, in the alternative, producing written  
19     documentation or lecturing or doing anything at all that  
20     would tell me that outside of the FBI he is an expert.

21            And based upon that, I think we can say that  
22     he's a proficient worker for the FBI but not an expert in  
23     this case.

24            THE COURT: Anything else you want to add for  
25     the record, Ms. Roohani?



TRANSCRIBED FROM DIGITAL RECORDING

1 MS. ROOHANI: Your Honor, Mr. Schapery did  
2 testify that his translations have been stipulated to  
3 numerous times in court, and although he hasn't had to  
4 testify, he's only not had to testify because they were  
5 stipulated to.

6 And so I would proffer that he is actually  
7 qualified in German-to-English translation, both upon his  
8 extensive training outside of the FBI, including numerous  
9 trips to Germany, including studying in Germany, and  
10 staying proficient.

11 And, more importantly, Your Honor, if there is  
12 any challenge to the translation, of course, the defense is  
13 able to challenge those translations once Mr. Schapery  
14 actually testifies.

15 THE COURT: All right. Well, he has been  
16 translating from German to English for 10 years. He  
17 testified that he's been taking quality review examinations  
18 and also keeping up on his proficiency in the German  
19 language, both by the work that he does daily as well as  
20 watching -- I don't remember if he said it was satellite  
21 TV, is that what you said, satellite TV shows in German,  
22 which is the more conversational German as opposed to maybe  
23 the academic German, which sometimes is more helpful in  
24 these cases.

25 I'll go ahead and accept him as -- and certify

—TRANSCRIBED FROM DIGITAL RECORDING—

1 him as an expert.

2 Everybody needs to be an expert once before  
3 they -- just because he hasn't been one before, it's  
4 important to highlight that, but it doesn't mean that he  
5 can't ever be.

6 And certainly if there is any question as to the  
7 translation, the defense has an opportunity to highlight  
8 where a word or a phrase might be incorrectly translated.

9 So I don't see that there's any prejudice in  
10 certifying him as an expert in English - or  
11 German-to-English translation at this point.

12 MS. ROOHANI: Thank you, Your Honor.

13 BY MS. ROOHANI:

14 Q. Agent Schapery, during the course of your  
15 involvement in this case, did you review the translations  
16 of other linguists who had translated the jail calls in  
17 this case?

18 A. Yes.

19 Q. Okay. The binder -- I think it's the binder that's  
20 open in front of you. Can you take a look Government's  
21 Exhibit 25A, 26A, 27A.

22 A. 25A, there's nothing there.

23 MS. CARTIER-GIROUX: The discs are out.

24 MS. ROOHANI: Oh, I'm sorry. I have the disks.

25 Your Honor, may I approach?

TRANSCRIBED FROM DIGITAL RECORDING

1 THE COURT: Sure.

2 MS. ROOHANI: Okay. Thank you.

3 THE COURT: Now, there's a couple of disks  
4 already here.

5 THE WITNESS: Okay. So I see a disk that says  
6 25A. Sorry.

7 BY MS. ROOHANI:

8 Q. What's marked as Government's Exhibit 25A,  
9 Government's 26A, and Government's 27A, do you see those  
10 disks?

11 A. Yes, ma'am.

12 Q. Do you recognize those disks?

13 A. Yes, ma'am.

14 Q. Are those the jail calls that you translated?

15 A. Yes, ma'am.

16 Q. Okay. And go ahead and just take a look at -- I'm  
17 just marking these, Your Honor -- take a look at 25B, 26B,  
18 and 27B. I believe those are in the binders.

19 A. Okay.

20 Q. Do you recognize those?

21 A. Yes, ma'am.

22 Q. You do recognize those?

23 A. Yes.

24 Q. Are those your translations of those jail calls?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And did you do the original translation on those, or  
2 did you review the translations of others on those?

3 A. I reviewed them.

4 Q. And have you accepted and adopted those translations  
5 as being your official translations as well?

6 A. Yes.

7 Q. Okay. And is it your testimony that those  
8 translations are true and correct German-to-English  
9 translations?

10 A. Yes.

11 Q. Okay. Have you reviewed those calls and  
12 translations recently?

13 A. Yes.

14 Q. And as part of that, did you load up into some fancy  
15 program that Marissa runs over there, the translations with  
16 the timestamp of the translations that are in front of you?

17 A. Yes.

18 Q. Okay.

19 MS. ROOHANI: Your Honor, I believe call 25B --  
20 I believe these clips have been admitted of the jail calls.  
21 And I'm going to -- I'm going to explain to Your Honor what  
22 the problem with this is.

23 The program that we run plays the jail call in  
24 German and will scroll the translation. For the purposes  
25 of a clear appellate record, I would ask that we be able to

TRANSCRIBED FROM DIGITAL RECORDING

1 play the call in German and the translation but to make  
2 sure that -- for the purposes of appeal, that it's clear.  
3 And I don't know if the circuit's going to be able to  
4 actually play whatever fancy program it is that Marissa has  
5 put on here.

6 I would ask that we be able to read those also  
7 in English into the record.

8 THE COURT: Aren't you admitting the transcript?

9 MS. ROOHANI: We are not admitting the  
10 transcript, Your Honor, because that is the complete call.  
11 We're not actually admitting the complete call into the  
12 record, just portions of the calls. They're very long  
13 calls.

14 MR. SANFT: Your Honor, I think at this  
15 particular point, the previous objection by the defense,  
16 with regards to the hearsay issue, I think we have to  
17 address that.

18 If Mr. Schapery is going to testify as to the  
19 accuracy of the translation, I think he's done enough to at  
20 least testify that his work in this case was accurate. But  
21 with regards to actually looking at the content of each of  
22 these phone calls, I think we're traversing back into the  
23 area that we objected to earlier, which is the issue of the  
24 hearsay --

25 THE COURT: All right.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MR. SANFT: -- with regards to Frank Alfter's  
2 conversations with our client.

3 THE COURT: And I think you're right. I have  
4 one more question for Mr. Schapery, though.

5 When you said that you reviewed these  
6 transcripts that were created by a different linguist, did  
7 you listen to them and read through the translation at the  
8 same time, or were you just reading through the transcript?

9 THE WITNESS: No. I'm listening to the audio,  
10 and I'm looking at the translation while I'm listening.

11 THE COURT: All right. And did you find any  
12 errors that you corrected?

13 THE WITNESS: Yes.

14 THE COURT: And how does that work? When you  
15 find what you believe to be an error, do you go back to the  
16 person who did it, and you both sit down and listen to it a  
17 third time, or how does that work?

18 THE WITNESS: No, no. You play the audio. We  
19 have foot pedals. You play it. If you think the audio  
20 doesn't match the translation, you can hit a foot pedal to  
21 go back up, play it again, play it again.

22 After you've listened to it several times, you  
23 convince yourself is it right or wrong? And if it needs to  
24 be fixed or not, you fix it there on the spot on your  
25 computer.

—TRANSCRIBED FROM DIGITAL RECORDING—

1           THE COURT: So you can just override the  
2 linguist? You don't have to go back and have the linguist  
3 tell you why they thought it was something else?

4           THE WITNESS: There are times when we do, but  
5 it's not required.

6           THE COURT: Okay. All right. And so my  
7 understanding is the government doesn't want to just admit,  
8 at this point, the statements from the defendant that are  
9 in the transcript, you want to play portions of it that  
10 includes Mr. Alfter's statements as well?

11           MS. ROOHANI: Right. So, Your Honor, the  
12 entirety of these calls are between the defendant and  
13 Mr. Alfter. What we are introducing is portions of these  
14 calls.

15           What we would submit to Your Honor is that we  
16 can admit the calls now, and you can consider those --  
17 Mr. Alfter's statements nonhearsay until the government is  
18 done presenting its case.

19           If you find that Mr. Alfter is an unindicted  
20 co-conspirator, at that time you can go back, obviously,  
21 and look at those statements and consider them for the  
22 truth of the matter asserted because they would be  
23 nonhearsay statements of an unindicted co-conspirator.

24           But for the purpose of them coming in, the  
25 decision doesn't need to be made right now as to whether

—TRANSCRIBED FROM DIGITAL RECORDING—

1 they're being considered for the truth today or whenever  
2 the government closes its case.

3 THE COURT: Okay. Well, I'm not going to  
4 preadmit them. I'll allow you to play them for the purpose  
5 of determining whether or not Mr. Alfter is a  
6 co-conspirator, and I'll withhold my decision on whether or  
7 not they're going to be admissible. I'll let you play them  
8 so we can at least start to understand what your proffer is  
9 for why Mr. Alfter could be a --

10 MS. ROOHANI: Your Honor, I'll let  
11 Ms. Cartier-Giroux talk specifically, because she's  
12 prepared to argue.

13 THE COURT: Okay.

14 MS. ROOHANI: Sorry.

15 THE COURT: No, that's fine.

16 MS. CARTIER-GIROUX: Judge, the calls would come  
17 in with Mr. Alfter's statements on there, and the -- if we  
18 had a jury, the jury would be instructed that the  
19 statements of the defendant are admitted for the truth  
20 under 801, but that they can consider the statements of the  
21 other person not for the truth but in relationship to the  
22 answers provided by the defendant.

23 So the calls are admissible. The question is  
24 whether or not the Court, at the end of this trial, will  
25 consider the statements in addition to the defendant's



—TRANSCRIBED FROM DIGITAL RECORDING—

1 statements as being for the truth of the matter asserted as  
2 opposed to just coming in to --

3 THE COURT: Provide context --

4 MS. CARTIER-GIROUX: Correct.

5 THE COURT: -- for the defendant's statements.

6 MS. CARTIER-GIROUX: Exactly. So the calls are  
7 admissible in the sense that they would come in normally.  
8 If he was not alleged to be an unindicted co-conspirator,  
9 those calls would come in for the defendant's statements,  
10 and Alfter's statements would come in but, as I said, only  
11 to put that into context.

12 So we're just asking --

13 THE COURT: So the question is whether  
14 Mr. Alfter's statements are to be considered as offered for  
15 truth of the matter asserted --

16 MS. CARTIER-GIROUX: Right.

17 THE COURT: -- or just to provide context to  
18 defendant's --

19 MS. CARTIER-GIROUX: And as --

20 THE COURT: -- admissions.

21 MS. CARTIER-GIROUX: -- we were saying is that  
22 we believe that the calls themselves -- and the rule does  
23 allow, if you look in -- and I can provide -- I don't know  
24 if I put it in the motion or not, I don't remember what I  
25 wrote, but there is case law that supports that the Court

—TRANSCRIBED FROM DIGITAL RECORDING—

1 can look at the actual statement itself, as well as outside  
2 information, to determine whether or not that person is, in  
3 fact, an unindicted co-conspirator.

4 So you're permitted to consider the call itself,  
5 as well, to determine whether or not that person in the  
6 call, that other speaker is, in fact, an unindicted  
7 co-conspirator. So you'd have to listen to that call,  
8 anyway, in order to make that determination.

9 But we believe that it is admissible, at least  
10 at this point in time, as the defendant's statement.

11 THE COURT: All right.

12 Mr. Marchese?

13 MR. MARCHESE: Well, there's several issues  
14 here. First off is relevance. Many portions, and there's  
15 many conversations, of the conversations are just  
16 completely irrelevant. Whether or not Mr. Alfter needs to  
17 go pay a certain bill has nothing to do with the nature and  
18 circumstances of this case.

19 So if any witness was to get up and start  
20 talking about that, an objection would have been lodged for  
21 relevance and, quite frankly, the Court probably would  
22 sustain it. So that's the first hurdle that the government  
23 needs to overcome.

24 Now we have the hearsay issue. I'm assuming  
25 what they're saying is that Mr. Alfter is an unindicted

—TRANSCRIBED FROM DIGITAL RECORDING—

1 co-conspirator in reference to the possession, the  
2 distribution, the receipt, and the advertising counts.

3 We would argue to the Court that he is not an  
4 unindicted co-conspirator because the conspiracy would, in  
5 fact, end at the time of the search. Because at that time  
6 the conspiracy is over, it's done. They have taken all the  
7 devices. There is no more advertising that they are, in  
8 fact, charging. It was all done back in August.

9 Further, the possession, there can be no  
10 possession because it's all in the possession of the  
11 government. So the conspiracy is over.

12 So what is -- what goes on in conversations  
13 months later, there's no ongoing co-conspiracy.

14 So even if the Court finds he is a  
15 co-conspirator, it wouldn't be relevant because the  
16 conspiracy has ended at the time of the search.

17 Further, the government has --

18 THE COURT: I thought there was an allegation  
19 that the conspiracy continued because the defendant was  
20 asking his husband to hide evidence related to this  
21 particular offense.

22 MS. CARTIER-GIROUX: That is actually true. In  
23 the call, there is -- in one of the calls we are going to  
24 offer, there is a conversation between Mr. Alfter and the  
25 defendant with regard to destroying potential items that

TRANSCRIBED FROM DIGITAL RECORDING

1 Special Agent Panovich -- deleting items that Special Agent  
2 Panovich shouldn't know about.

3 MR. MARCHESE: Well, and that's why we need to  
4 take each of these issues piecemeal. Because that's, like,  
5 one pane. And we have pages and pages.

6 Not to mention there's also hearsay upon  
7 hearsay. There's Mr. Alfter talking on these jail calls  
8 about what other people are saying.

9 So not only do they have to get over the first  
10 hurdle of hearsay, they have to get over the second hurdle  
11 of hearsay.

12 So just to allow these in in their totality is a  
13 big problem, Your Honor. And I don't think they -- and I  
14 believe that the Court made the correct ruling to allow  
15 them in and then see what should be allowed in and what not  
16 to be allowed in.

17 Because, as we said earlier, once the bell is  
18 rung, we can't undo it. And the government needs to meet  
19 all these separate hurdles, whether it be relevance,  
20 hearsay, et cetera.

21 MS. CARTIER-GIROUX: And, Judge, first of all, I  
22 disagree -- respectfully disagree with Mr. Marchese with  
23 regard to when a conspiracy can end. It doesn't  
24 necessarily have to end at a point in time where there's an  
25 arrest. It can continue if the -- if the object of the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 conspiracy can continue after there's an arrest. But  
2 that's just not a correct statement of the law.

3 Second, the portions that we are going to play,  
4 we provided him with the three transcripts. The portions  
5 that we are going to play, I can make a proffer to the  
6 Court -- Ms. Roohani can make a proffer to the Court as to  
7 what portions we're playing, they are relevant to the  
8 issues with regard to the e-mail, with the issues with  
9 regard to the destruction of evidence, and they're also  
10 relevant with regards to (inaudible).

11 MS. ROOHANI: Your Honor, specifically, going  
12 call by call, on Government's Exhibit 25B, it is the  
13 defendant giving Mr. Alfter his e-mail address and  
14 indicating it's an admission by the defendant that it is,  
15 in fact, his e-mail.

16 On Government's Exhibit 26B is the defendant's  
17 response to Mr. Alfter's allegations that there were  
18 passwords changed on the computer, and it's coming in for  
19 the truth of the defendant's reaction, which is he didn't  
20 actually object to that, he, in fact, conceded it.

21 And then on -- wait. That's right. 27B is  
22 specifically related to the ongoing conspiracy. First,  
23 there's a portion where Mr. Alfter's -- sorry,  
24 Mr. Fuechtener tells Mr. Alfter that they have to embellish  
25 the number of people who were at the house and the people

—TRANSCRIBED FROM DIGITAL RECORDING—

1 who had access to the house and the computer, which the  
2 government submits is an indication -- or at least  
3 consciousness of guilt; and then in another portion where  
4 Mr. Fuechtener is instructing Mr. Alfter to delete the  
5 evidence that Special Agent Panovich should not see, and  
6 Mr. Alfter asks for further instructions, and  
7 Mr. Fuechtener confirms those instructions.

8 Those are the only portions that we are  
9 intending to admit. We submit that those are all  
10 absolutely relevant. The first two are relevant to the  
11 charges in this case dealing with who is  
12 larsschmidt22@hotmail.com, which, as Your Honor knows, is  
13 an important thing for the government to be able to prove.

14 The second call is about -- is showing that it  
15 is the defendant who has access to all the computers and  
16 has dominion and control over those computers, and is  
17 exerting that dominion and control over those computers.

18 And the third goes to the fact that Mr. Alfter  
19 is an unindicted co-conspirator.

20 So I think that we've shown relevance. And  
21 Mr. Marchese is absolutely correct. I will say that he's  
22 absolutely correct that the entirety of these calls are not  
23 relevant, which is why the government is not intending to  
24 admit the entirety of these calls but rather only the  
25 portions that are relevant.

—TRANSCRIBED FROM DIGITAL RECORDING—

1                   And we are confident, Your Honor, that you will  
2                   be able to listen to these calls, and, when you make a  
3                   determination as to whether or not Mr. Alfter is an  
4                   unindicted co-conspirator, you can either decide to look at  
5                   those statements for the truth of the matter asserted, and  
6                   if you ultimately find that we have not met our burden,  
7                   then you can still look at those calls to determine  
8                   Mr. Fuechtener's reactions to those. And Mr. Alfter's  
9                   statements wouldn't come in for the truth of the matter  
10                  asserted but to show the impression that they are making on  
11                  the listener, which is Mr. Fuechtener.

12                  THE COURT: All right. So I'm going to go ahead  
13                  and allow you to play the excerpts from the three different  
14                  calls to demonstrate the admission of the e-mail address or  
15                  knowledge of the e-mail address, the concede the password  
16                  change due to the control over the computer at issue, and  
17                  the other call I think is about embellishing how many  
18                  people are at the house, and the possible destruction of  
19                  evidence.

20                  If that's what the calls -- if that is the  
21                  substance of what the calls provide, that does sound like  
22                  they are relevant. And as I said before, the defendant's  
23                  statements are clearly inconsistent statements by a party  
24                  opponent, so they -- those would be admissible. Whether or  
25                  not Mr. Halfter -- Alfter, I keep saying Halfter, After,

—TRANSCRIBED FROM DIGITAL RECORDING—

1 a-f-t-e-r? No.

2 MS. ROOHANI: Alfter.

3 THE COURT: Alfter, that's what it is,  
4 A-l-f-t-e-r, whether or not his statements are hearsay or  
5 not or just offered to provide context for defendant's  
6 statements I'll decide after -- after I hear all the  
7 evidence that the government has to proffer on that issue.

8 Are we going to keep Mr. Schapery here to help  
9 us with the translation?

10 MS. ROOHANI: Yes, Your Honor. Obviously he is  
11 subject to cross, but I -- I don't know how this technology  
12 works, so I have to ask the people in charge of that.  
13 Please hold.

14 THE COURT: Okay.

15 MR. MARCHESE: And, just briefly, Your Honor, I  
16 just wanted to lay a little bit more of a record.

17 Obviously Mr. Alfter is not here to be  
18 cross-examined, so I feel that there's a confrontation  
19 issue.

20 There's also, in my opinion, a notice issue.  
21 The pleadings say nothing about a conspiracy. So the first  
22 time we heard about this, as Your Honor is aware, is a  
23 motion filed about an hour before court. The parties  
24 weren't put on notice until we were actually in court to  
25 start the trial.



—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: Your Honor, as we noted in our --  
2 in the written memorandum in support of the oral motion  
3 that we are obviously intending to make or have made at  
4 this point is that the Supreme Court has held that this is  
5 not a pretrial motion, that this is a motion to be made at  
6 trial, and it is typically made after the government rests  
7 its case in chief because that would be the point at which  
8 the government would have had to prove that Mr. Alfter is  
9 an unindicted co-conspirator.

10 So to the extent that the defense is arguing  
11 untimeliness, that's directly refuted by the Supreme Court  
12 case law.

13 And so we would submit that we originally filed  
14 this before court to give the Court an opportunity to  
15 consider the issues because we know that in this district  
16 the judges would prefer to have things in writing and also  
17 to be able to consider that during the course of the trial.  
18 And that's why we did it that way. It wasn't intended to  
19 be in bad faith or to blindsides the defense in any way. We  
20 are following the authority as set forth by the Supreme  
21 Court.

22 THE COURT: All right. Go ahead and play the --

23 MS. ROOHANI: Okay. I have to admit them first.  
24 So may I approach Mr. Schapery?

25 THE COURT: Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: And these have been admitted as --  
2 or, I'm sorry, marked as Government's Exhibit 46A, 46B, and  
3 46C.

4 And these are clips from what was originally  
5 marked as 25A, 26A, and 27A.

6 BY MS. ROOHANI:

7 Q. So do you recognize these as being the clips from  
8 those particular files?

9 A. Yes.

10 Q. Okay.

11 MS. ROOHANI: And, Your Honor, we would move to  
12 admit the clips at this time. And that is Government's  
13 Exhibits 46A, 46B, and 46C.

14 THE COURT: All right. Subject to any changes  
15 later as to the proffer.

16 (Government's Exhibits 46A, 46B, 46C  
17 received.)

18 MS. ROOHANI: And, Your Honor, I would ask that  
19 46A, which is an excerpt from the jail call which was  
20 marked at 45B, be played for the Court.

21 I believe that it will play it in German on the  
22 audio, and I will scroll the English translation.

23 BY MS. ROOHANI:

24 Q. And, Mr. Schapery, I would ask that you watch the  
25 translation, also listen to the audio, and make sure that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 it's a fair and accurate depiction of what you originally  
2 translated and put into the system as being played.

3 THE COURT: Do you know what page this is going  
4 to be on the transcript?

5 MS. ROOHANI: There's a portion from page 5 and  
6 there's a portion from page 7 and 8 which has been marked  
7 as Government's Exhibit 25 -- on this particular call,  
8 Government's Exhibit 25B.

9 (Audiotape played.)

10 MS. ROOHANI: And that was from page 5.

11 Okay.

12 (Audiotape played.)

13 BY MS. ROOHANI:

14 Q. Okay. Agent Schapery, is that a correct  
15 translation, and is that your translation as loaded into  
16 the same audio?

17 A. Yes.

18 Q. Okay.

19 Let's take a look at -- I'm sorry?

20 (Discussion held off the record.)

21 MS. ROOHANI: Oh, I'm sorry, there was one more  
22 on there, Your Honor. Oh, it continues.

23 (Audiotape played.)

24 MS. ROOHANI: And, Your Honor, just to be clear,  
25 that's a continuation of actually the same portion. It was

—TRANSCRIBED FROM DIGITAL RECORDING—

1 just broken up into two clips.

2 THE COURT: So that's all 45A, which was taken  
3 from 25A; is that right?

4 MS. ROOHANI: It's 46A, which is taken from 25A.

5 THE COURT: Okay. Thank you.

6 MS. ROOHANI: And, Your Honor, for the -- I  
7 think we can come -- well, Your Honor, I would ask that we  
8 be able to read the same into the record from this  
9 particular thing for the purposes of making a clear  
10 appellate record.

11 THE COURT: And we don't have a printout of  
12 this?

13 MS. ROOHANI: Not this particular portion. I  
14 guess I could potentially put a printout of this as an  
15 additional exhibit.

16 If that would be preferable to Your Honor, I  
17 would absolutely be happy to do that.

18 THE COURT: Yeah. That's what we saw. If you  
19 could just print out what we just saw, that's fine.

20 MS. ROOHANI: Certainly. We'll do that. And  
21 we'll put that into the -- we'll add that as additional  
22 exhibits.

23 THE COURT: Okay.

24 MS. ROOHANI: All right. Let's take a look at  
25 Government's Exhibit 47A, which is drawn from Government's

TRANSCRIBED FROM DIGITAL RECORDING

1 Exhibit 26A.

2 MS. CARTIER-GIROUX: It's actually 46B.

3 MS. ROOHANI: 46B. I lied. I want to be able  
4 to tell Your Honor what pages we're on. We're on pages 9  
5 and 10 of the transcript.

6 26B. Go ahead.

7 (Audiotape played.)

8 MS. ROOHANI: Okay.

9 BY MS. ROOHANI:

10 Q. Is that a true and correct translation -- is that  
11 your translation and also the audio that you heard when you  
12 did that translation?

13 A. Yes.

14 Q. Okay.

15 Let's look at Government's Exhibit 46C drawn  
16 from 27A.

17 The translation, Your Honor, from 27B begins on  
18 page 11, and then the second clip begins on page 13.

19 (Audiotape played.)

20 MS. ROOHANI: And that was from page 11 and page  
21 13, as well, Marissa.

22 (Audiotape played.)

23 BY MS. ROOHANI:

24 Q. Is that also your translation matched up to the  
25 audio?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Yes.

2 Q. Okay. Go ahead and take a look at what's been  
3 marked -- or been admitted as Government's Exhibit 28A.  
4 It's under tab 28. Agent Schapery, look at Government's  
5 Exhibit 28A, which has been admitted. And then also take a  
6 look at the document behind it, which is marked as 28B.

7 And I realize that the font on that is virtually  
8 microscopic. But do you recognize 28A?

9 A. Yeah, I can read it. Yes, I do.

10 Q. Okay. And do you recognize 28B?

11 A. Yes, I do.

12 Q. How do you recognize 28B?

13 A. How do I recognize it?

14 Q. Yes.

15 A. I reviewed it.

16 Q. Okay. And did you adopt that particular translation  
17 as your own?

18 A. Yes, I did.

19 Q. Okay.

20 MS. ROOHANI: Your Honor, I would move to admit  
21 Government's Exhibit 28B into evidence at this time.

22 THE COURT: But not -- but 28A has already been  
23 admitted; right?

24 MS. ROOHANI: Yes, Your Honor.

25 THE COURT: All right. So it's just 28B at this

TRANSCRIBED FROM DIGITAL RECORDING

1 point.

2 Any objection?

3 MR. MARCHESE: No, Your Honor.

4 THE COURT: All right. So 28B will be admitted.

5 (Government's Exhibit 28B received.)

6 BY MS. ROOHANI:

7 Q. And I just wanted to note, were you the original  
8 translator of this particular document?

9 A. No, I was not.

10 Q. Were you the original reviewer of this particular  
11 document --

12 A. No, I was the second reviewer.

13 Q. Okay. And have you adopted this particular  
14 translation as your own?

15 A. Yes, I have.

16 Q. Okay. So looking at the second page of that, which  
17 is Bates number 3520, it's marked as page 1, what is this?  
18 What is this a translation of?

19 A. Are you looking at the summary page?

20 Q. Yes.

21 A. So that is a summary of the chat --

22 Q. Okay.

23 A. -- between two people.

24 Q. It's an actual chat message. And who is the chat  
25 between?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       KaiUweJensen and lars45.

2       Q.       And what date did this particular chat take place  
3 on?

4       A.       March 21st, 2015.

5       Q.       And can you -- at the top has a summary translation.  
6 Can you tell us what that summary translation says?

7       A.       On March 21st, 2015, 1720300, (KaiUweJensen)  
8 contacts 1720769, lars45, in a chat session and says that  
9 one film or movie is not much, to which lars45 replies that  
10 he has more films and suggests seeing whether this one  
11 works out.

12               He, lars45, adds that he has a Mac computer,  
13 that it, the film, wouldn't start.

14               KaiUweJensen comments in reply that because  
15 lars45 constantly goes offline everything breaks off.

16               Lastly, lars45 writes that he is installing it,  
17 the film, on his PC, to see whether it works out.

18       Q.       Okay. And I just have one more question for you.

19               There is a word in German that I would like for  
20 you to translate for me. And I speak zero German, so I'm  
21 just going to spell it for. A-n-g-e-k-l-i-n-g-e-l-t. What  
22 does that translate to?

23       A.       It means somebody is ringing you up or calling you.

24       Q.       Okay.

25               MS. ROOHANI: And, Your Honor, I would pass the



—TRANSCRIBED FROM DIGITAL RECORDING—

1 witness at this time.

2 THE COURT: Any cross?

3 CROSS-EXAMINATION

4 BY MR. SANFT:

5 Q. Sir, talking a little bit about your qualifications  
6 earlier, you said something about working in this field for  
7 about how long again, 10 years?

8 A. I've worked for the FBI for 10 years.

9 Q. Okay. And I didn't catch what you did prior to  
10 working for the FBI.

11 A. Are you asking professionally? I was an electrical  
12 engineer for 25 years.

13 Q. All right. And so what made you change from  
14 becoming electrical engineer into going into translation  
15 for the FBI?

16 A. Well, 9-11 happened at the same time as I was no  
17 longer too thrilled with my existing profession at the  
18 time. And after a couple years the FBI contacted me -- or  
19 rather, excuse me, some months later the FBI contacted me  
20 to see if I was still interested, and I was; so while I was  
21 still employed as an engineer, I took all of their exams,  
22 passed all of their exams, and took about another two years  
23 before they offered me a contract.

24 Q. All right. Now, one of the things that you had  
25 testified here in court was that the FBI requires -- or at

—TRANSCRIBED FROM DIGITAL RECORDING—

1     least makes determination as to translations based upon  
2     meaning-for-meaning instead of word-for-word.

3                     Do you recall that?

4     A.     That's right.

5     Q.     And the reason you had given was because, hey, you  
6     know, if you were to just translate literally every word,  
7     like, for instance, putting it in Google Translate, you'd  
8     come up with basically a bunch of garbled words put  
9     together because there's no syntax, would that --

10    A.     It would be a confusing translation.

11    Q.     I'm sorry?

12    A.     It would be a confusing translation.

13    Q.     Okay. But with regard to translation, for instance,  
14    how do you make a determination based upon what you're  
15    hearing as to, for instance, slang? And I'm not talking  
16    just specifically about what you see on television, but  
17    just in terms of actual slang being two individuals who  
18    talk the language and speak the language and share the same  
19    experience over time. How do you make that determination?

20    A.     If the words that you hear literally make absolutely  
21    no sense, then that's one indication it could be an idiom.  
22    And then if I had not -- if I was not familiar with that  
23    idiom I would research it, you know, either on the Internet  
24    or dictionary or ask a colleague to see if that's an idiom.

25                     Other times if I can't determine that it's an

—TRANSCRIBED FROM DIGITAL RECORDING—

1 idiom, I would just put down a word-for-word translation.

2 Q. There is one of the clips that we saw here in court  
3 today was a clip in which the word "mysterious" was used.

4 Do you recall that particular line?

5 A. Yes.

6 Q. Is that one of the idioms you're talking about in  
7 which you just put the word down for what is the literal  
8 translation and not necessarily what it may mean to the  
9 individuals?

10 A. In that case I recall using it was the literal  
11 translation.

12 Q. Okay. The other word that we've talked a little bit  
13 about here in court was the issue with the word  
14 "embellish." How do you pronounce that word in German?

15 A. *Ausschmücken*.

16 Q. Is that the word that you had heard?

17 A. Yes.

18 Q. And --

19 A. Or *ausschmückte*, past tense, I think.

20 Q. Can you spell that word for the Court.

21 A. A-u-s-s-c-h-m-u, with an, umlaut, c-k-e-n.

22 Q. I'm sorry. You went a little bit too fast, and I  
23 don't speak German. So I apologize.

24 A. A-u-s-s-c-h-m-u, with two dots on top, c-k-e-n.

25 Q. -- c-k-e-n?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. Right.

2 Q. And that's the word that you had heard in the  
3 translation to mean embellish?

4 A. That's right.

5 Q. The word -- and I'm going to spell the word for you,  
6 v-e-r-s-c-h-o, with two little dots over it, n-e-r-n. What  
7 does that word mean in German?

8 A. Can you spell it one more time?

9 Q. V, as in Victor, e-r-s-c, as in Charlie, h-o, with  
10 two little dots over it, n-e-r-n. What does that word  
11 mean?

12 A. *Verschönern*?

13 Q. Yes.

14 A. To make something more beautiful.

15 Q. Okay. Now, if I were to type that word into Google  
16 Translate and it comes up with the word embellish, would  
17 that be wrong?

18 A. Would that be wrong?

19 Q. Would that be a wrong translation, according to  
20 Google Translate?

21 A. Embellish -- *ausschmücken* can also mean to decorate.  
22 So if that's what you're driving at, and *ausschmücken* also  
23 means to make something prettier, like *verschönern* means to  
24 make it prettier, then, yes, *ausschmücken* could also mean  
25 to make it prettier.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. So, for instance, in the conversation that the Court  
2 had heard specifically about individuals that may have come  
3 in and out of the house, could another interpretation at  
4 least understanding be, for instance, that the people that  
5 were coming in that were so unsavory that we wanted to  
6 brighten them up or at least make them look prettier or not  
7 as much like criminals coming in and out of the house?

8 A. That's not how I interpreted it.

9 Q. Okay. But, once again, you weren't asked to look  
10 at, for instance, the understanding of two individuals in  
11 terms of their actual conversation, either between Jan and  
12 her -- and his husband Frank; right?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. Okay. Now, in addition to that, your testimony was  
17 that you were given these recordings to translate; is that  
18 right? By the FBI?

19 A. Correct.

20 Q. Were you told beforehand what the purpose or what  
21 the general investigation was with regards to Jan  
22 Fuechtener?

23 A. Yes.

24 Q. So you understood prior to translating that there  
25 was an issue with regard to child pornography?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes.

2 Q. Maybe about the idea that it was located on hard  
3 drives or computers in a home that's found in his home?

4 A. Correct.

5 Q. And based upon that knowledge, you then started to  
6 translate?

7 A. That's right.

8 Q. Wouldn't it be fair to say, of course, that if you  
9 had just been given a bunch of tapes and gone into a room  
10 and said translate these tapes, that you would not have had  
11 the ability to at least put context in terms of what you  
12 were translating?

13 A. Context is always important when you're doing the  
14 translation.

15 Q. Okay. So with regards to your translation, you were  
16 translating with an understanding that this is what you  
17 were looking for, or this is what your employer was looking  
18 for, which is regards to child pornography, the presence of  
19 child pornography, and whether or not these individuals  
20 knew that there was child pornography; correct?

21 A. Correct.

22 Q. You had also testified, as well, as to corrections  
23 of translations, that you had seen things that you thought  
24 need to be corrected and you corrected those translations?

25 A. Yes.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Do you have a copy of the corrections of those  
2 translations here?

3 A. No.

4 Q. Do you keep a copy with regards to what you see as a  
5 possible misinterpretation of translation and notify that  
6 or put that into a report anywhere?

7 A. No.

8 Q. And was this particular translation or series of  
9 translations ever peer reviewed, looked at by anybody else?

10 A. Well, these translations were at least done by two  
11 people, and sometimes by three, meaning they were at least  
12 reviewed by someone else or, in a couple cases, by someone  
13 else and me.

14 Q. And are those people listed in your report?

15 A. They are listed on the cover sheets of each  
16 translation.

17 Q. And with regard to the translations of each of these  
18 individuals, do you have specifically where they translated  
19 the portions of their contribution to the translations in  
20 this case?

21 A. I don't understand your question. Do I have them?

22 Q. Meaning, do you -- can you tell us here, for  
23 instance in court today, where the document that we saw  
24 here today was translated by yourself as well as somebody  
25 else, and who that person is?

—TRANSCRIBED FROM DIGITAL RECORDING—

1       A.       That is the joint translation of the individuals you  
2       see on the cover page.

3       Q.       Okay. So -- but, for instance, we can't be here  
4       today telling the Court, for instance, that specifically  
5       one of the individuals that is part of your team translated  
6       this portion of the call or this other person translated  
7       this other portion?

8       A.       It was not done in portions.

9       Q.       Okay.

10               MR. SANFT: I have no further questions, Your  
11       Honor. Thank you.

12               THE COURT: I want to clarify on that same line,  
13       which picks up on a question I had before.

14               So I understand that on the front of the  
15       transcript it will say who was the linguist and who  
16       reviewed it, and then eventually you review it, as well.  
17       But you're saying you could override their changes.

18               So could the linguist have come up with one  
19       translation, the reviewer changes it, and then you change  
20       it back? You said it sounded like there could have been  
21       several versions as a particular word might have been used  
22       more --

23               THE WITNESS: There were working versions --

24               THE COURT: Right, so --

25               THE WITNESS: -- on the computer.



—TRANSCRIBED FROM DIGITAL RECORDING—

1           THE COURT: But there's nowhere that we could  
2 see to track changes, edits that have been made to the  
3 translation as different people review it and fine tune it?

4           THE WITNESS: I think --

5           THE COURT: Or revert it to the original?

6           THE WITNESS: -- if I could find working copies  
7 that might exist, you would have to subpoena the FBI to go  
8 through the hard drives of the linguists to find that they  
9 might have on their hard drives.

10          THE COURT: But it's not part of the process  
11 when you review or anyone else reviews something and  
12 changes the translation to create a log or a list or --

13          THE WITNESS: No. At the very end, there's a  
14 final translation, and that's what we submit.

15          THE COURT: And do you tell anyone, just for  
16 performance review, so that if someone has mistakes, their  
17 supervisor knows about it?

18          THE WITNESS: I can certainly give informal  
19 feedback to the linguist if I found a lot of mistakes.

20          THE COURT: Do you remember if that word,  
21 "embellishment," was one of the words that might have been  
22 edited?

23          THE WITNESS: I didn't change that word. I  
24 checked it. I looked in at least three different  
25 dictionaries, and embellishment was the number one

TRANSCRIBED FROM DIGITAL RECORDING

1 translation for that word in those three different  
2 dictionaries.

3 THE COURT: But in context, it could also mean  
4 to beautify, you said, or to --

5 THE WITNESS: Yes. I mean, in context it could  
6 also mean simply to add more detail.

7 THE COURT: All right.

8 Ms. Roohani?

9 REDIRECT EXAMINATION

10 BY MS. ROOHANI:

11 Q. Mr. Sanft asked you a question about whether certain  
12 words in different context can mean different things.

13 Do you remember that question?

14 A. Yes.

15 Q. Can the word login mean something different in a  
16 different context, whether it's a drug case or a child  
17 pornography case?

18 A. Login? I don't think so.

19 Q. What about the word computer?

20 A. No.

21 Q. What about the word people?

22 A. No.

23 Q. What about the word pool house?

24 A. (No audible response.)

25 Q. So those words would have the same meaning

—TRANSCRIBED FROM DIGITAL RECORDING—

1 regardless of whether it was a drug investigation, a gun  
2 investigation, a child pornography investigation?

3 A. Yes.

4 Q. I want to look back at the word embellish in  
5 context. Of course, I can't find where it is. One moment.

6 Look at Government's Exhibit 27B. 27B, page 11.

7 And, actually, Marissa, can you queue up 46C to  
8 the word embellish.

9 Let me ask you a few questions while this gets  
10 set up.

11 You testified that the word embellish could mean  
12 decorate; right?

13 A. That's one possibility.

14 Q. And it could also mean add more detail; is that  
15 correct?

16 A. That's right.

17 Q. All right. And that's the translation of the word  
18 that starts with an A that I'll never be able to pronounce?

19 A. *Ausschmücken*.

20 Q. That word.

21 (Pause in the proceedings.)

22 MS. ROOHANI: Okay. Just pause right there.

23 BY MS. ROOHANI:

24 Q. In this -- can you read me what that sentence says,  
25 please, on -- it's on your screen. That highlighted

—TRANSCRIBED FROM DIGITAL RECORDING—

1 sentence.

2 A. "Frank, we have to embellish a bit more how many  
3 people were actually there."

4 Q. And in this context, if you change the word  
5 "embellish" to "decorate," would that make any sense?

6 A. No.

7 Q. If you changed it to "add more detail," would that  
8 make any sense?

9 A. Yeah, add a bit more detail, that would make sense.

10 Q. Would it make change if you were changing the number  
11 of people, or is the number a finite people? If there's  
12 five people, there's five people; right?

13 A. I -- could you rephrase your question, please?

14 Q. Sure. The number of people, how many people were  
15 actually there, does that talk about a number of people or  
16 does it talk about a quality of people?

17 A. How many.

18 Q. How many. And so in that instance, does "add more  
19 detail" make any sense?

20 MR. SANFT: Objection, Your Honor. It goes  
21 for -- speculation. The document is what the document is.

22 MS. ROOHANI: I'm trying to --

23 MR. SANFT: We're asking here not for an  
24 interpretation as to what the person means. Outside of the  
25 translation, in and of itself, I don't know if this person

—TRANSCRIBED FROM DIGITAL RECORDING—

1 is qualified to answer that question. And if he is, then  
2 I'm going to have to ask him a whole bunch of more  
3 questions, specifically what everything means in these  
4 documents.

5 I just don't believe that he is qualified to  
6 answer that outside of the translation itself.

7 THE COURT: Ms. Roohani?

8 MS. ROOHANI: And, Your Honor, I'm not asking  
9 him to figure out the intent of the person saying this  
10 particular statement. I'm trying to get him to explain why  
11 he used the word "embellish" as opposed to "add more  
12 detail" in this particular instance.

13 BY MS. ROOHANI:

14 Q. So in this particular instance, when you used the  
15 word "embellish," did you use the word "embellish" because  
16 a different meaning did not make any sense, or did you use  
17 it because it's the number one definition?

18 A. I used it because it was the number one definition  
19 in three different dictionaries I looked at.

20 MS. ROOHANI: Okay. Then I don't have any  
21 further questions for this particular witness, Your Honor.

22 THE COURT: All right. So there's no ruling on  
23 the objection because she restated the question. So --

24 MR. SANFT: Yes, Your Honor.

25 THE COURT: All right.

TRANSCRIBED FROM DIGITAL RECORDING

1 MR. SANFT: I do have a question.

2 THE COURT: Any more cross? Go ahead.

3 RECROSS-EXAMINATION

4 BY MR. SANFT:

5 Q. How accurate is Google Translate?

6 A. Not very.

7 Q. It's not very accurate? Okay.

8 So, for instance, if I were to type in this word  
9 "*ausschmücken*" in here, and the number one thing that pops  
10 up is "decorate," you're telling us today that that would  
11 not be very accurate?

12 A. In some contexts, it's perfectly accurate.

13 Q. Okay. So, once again, going to the issue with  
14 regards to context, you're not here to testify necessarily  
15 to context, you're here just to translate -- to testify as  
16 to translation of words; right?

17 A. That's right.

18 Q. Okay. Now, the screen that had popped up here a  
19 second ago and the government had put up that particular  
20 line that was up there, specifically you're testifying here  
21 today and you're saying, hey, the word embellish fits  
22 better because of the remainder of the sentence; right?

23 A. It fits -- it fits in this context.

24 Q. Okay. Now, let me ask you this question.

25 Did you read the translations before and after

TRANSCRIBED FROM DIGITAL RECORDING

1 this particular clip shown to the government or as shown to  
2 the Court here today?

3 A. Are you talking about ahead of this line or --

4 Q. Yes.

5 A. Have I read what came before and what came after?  
6 Yes, I have.

7 Q. Okay. And would it be fair to say that those  
8 typically -- those lines typically would help add meaning  
9 to what this particular line is, which is line 04 that's  
10 now shown on the screen in front of you?

11 A. I can't answer that.

12 Q. Okay. Well, let me ask you this.

13 Do you have anywhere else in this translation  
14 where there's a discussion about adding people or adding  
15 numbers of people to potential witnesses that could have  
16 been in that home?

17 A. I don't recall that.

18 Q. Okay. So the only thing that we have in this case  
19 is we have the word embellish that's used in the actual  
20 line here in line 04 and line 05 of the item that you see  
21 in front of you?

22 A. That's right.

23 Q. Okay. And so based upon that, even though you're  
24 saying at this particular point that no other word would  
25 have fit, your understanding was the word -- and I'm --

TRANSCRIBED FROM DIGITAL RECORDING

1       A.       I didn't say that. I didn't say that no other word  
2 would fit. I said that you could also say add a bit more  
3 detail.

4       Q.       Oh, okay.

5       A.       That's what I said.

6       Q.       All right. Well, let's just talk about that for a  
7 second.

8                       Why didn't you put that word in there?

9       A.       Because I checked three different dictionaries --  
10 actually it was the first word that was there by the  
11 original translators, and I checked three different  
12 dictionaries, and it came up as that's the main  
13 translation.

14                      It fits the context. So I left it alone.

15       Q.       So, for instance, if you had put the word in there  
16 or the series of words, "Frank, we have to add more detail  
17 as to how many people are actually there," your testimony  
18 here today is that would actually fit as well?

19       A.       Yes.

20       Q.       And you're telling us today that because of the fact  
21 that you chose the word "embellish," that was just a coin  
22 flip?

23       A.       It wasn't a coin flip.

24                      Like I said, I wasn't sure if it was the right  
25 translation, so I checked multiple dictionaries to make



—TRANSCRIBED FROM DIGITAL RECORDING—

1     sure. Yeah, that's the first thing that always come up.  
2     It does fit the context. So I left it alone as embellish.

3     Q.     Okay. But, once again, your testimony here today is  
4     if you were to substitute the word "embellish" for the  
5     phrase "more detail," meaning to add more detail, then that  
6     would also be accurate in terms of translation?

7     A.     That is correct.

8             MR. SANFT: No further questions, Your Honor.

9             THE COURT: Redirect?

10            MS. ROOHANI: Just one brief question.

11                    FURTHER REDIRECT EXAMINATION

12     BY MS. ROOHANI:

13     Q.     When you said you checked three dictionaries, what  
14     three dictionaries did you check?

15     A.     There was the PONS online dictionary, there was LEO,  
16     and then there was the CC German dictionary.

17     Q.     And are those three --

18     A.     Three different online dictionaries.

19     Q.     And those are published by German-speaking people?

20     A.     I don't know who publishes them.

21     Q.     Okay. Are those considered credible dictionaries?

22     A.     They are commonly used in the business.

23     Q.     Okay. And so you -- the original translator  
24     translated that word to mean embellish; is that correct?

25     A.     That's right.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. And then you double checked that?

2 A. I triple checked it, basically.

3 Q. You triple checked it. Okay.

4 MS. ROOHANI: I don't have any further  
5 questions, Your Honor.

6 THE COURT: Mr. Sanft, anything else?

7 MR. SANFT: I'm sorry.

8 FURTHER RECROSS-EXAMINATION

9 BY MR. SANFT:

10 Q. Did you ever look at the Alfter and Rouven or  
11 Fuechtener dictionaries as well?

12 MS. ROOHANI: Objection. Objection, Your Honor.

13 MR. SANFT: Let me ask you the reason for that.  
14 Once again, I want to make sure we're clear.

15 BY MR. SANFT:

16 Q. You don't know the individuals that are involved in  
17 this case; right?

18 A. That's correct.

19 Q. You don't know their history; right? You're not  
20 there with them every day. You don't hear their language  
21 and how they speak to one another; correct?

22 A. Correct.

23 Q. And so even though you choose one word, "embellish,"  
24 your testimony is that the other word, which is --

25 THE COURT: "Add more detail."

—TRANSCRIBED FROM DIGITAL RECORDING—

1 BY MR. SANFT:

2 Q. -- "add more detail," thank you, Your Honor -- is  
3 equally as accurate of a translation?

4 A. I think it is -- I think it's fair. I chose  
5 embellish because two other linguists had gone with it,  
6 three dictionaries I checked used the same definition. And  
7 that's why I stuck with it.

8 Q. Okay. Once again, when I asked the first question  
9 about the Fuechtener and the Alfter dictionaries, I  
10 wasn't -- I'm trying to be a little bit facetious, but I'm  
11 telling you right now, you don't know these individuals --

12 A. I don't know --

13 Q. -- you can't tell --

14 A. -- what's in their head at the time they speak a  
15 word.

16 MR. SANFT: Thank you, Your Honor.

17 I appreciate it.

18 THE COURT: Anything else, Ms. Roohani?

19 MS. ROOHANI: No, Your Honor.

20 THE COURT: All right. I think we're all done.

21 Thank you very much for coming in this  
22 afternoon. Please be careful to only take with you things  
23 you brought in. I don't think you brought anything, did  
24 you?

25 THE WITNESS: I didn't bring anything.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 THE COURT: Yeah, you didn't. Good for you.

2 Well, thank you. Please be careful on the way  
3 down with those steps.

4 Did you want to release him or have him on  
5 stand-by?

6 MR. SANFT: Your Honor, if we could ask for this  
7 witness to be on stand-by for a quick second. We want to  
8 just review one other translation. It went by really fast,  
9 and so I need an opportunity to at least read that  
10 translation.

11 THE COURT: So did you want to re- -- all right.  
12 Did you want to continue cross? Is what you're saying, you  
13 need a break before you're sure whether you're done  
14 crossing him?

15 MR. SANFT: Well, the problem that I have in  
16 this case, Your Honor, is that there is additional words  
17 that were at least said in the audio translation that went  
18 by really fast that I need an opportunity to at least  
19 identify as a word that may be misinterpreted in this case.  
20 And it's a very significant word. And if you just want him  
21 up on the stand, we can do it.

22 THE COURT: All right. Well, we need to take a  
23 bathroom break -- I was going to take a bathroom break  
24 after this witness anyway.

25 So we're not going to release you just yet. You

—TRANSCRIBED FROM DIGITAL RECORDING—

1 can go stretch, use the bathroom yourself. Please don't  
2 talk to the attorneys. You're still under oath. We may or  
3 may not recall you just to ask you about a few more terms.  
4 All right?

5 THE WITNESS: Okay.

6 THE COURT: All right. So let's go ahead and  
7 take our break. It's 3:10. Try to be back here about  
8 3:20ish.

9 COURTROOM ADMINISTRATOR: All rise.

10 (Recess from 3:11 p.m. until 3:29 p.m.)

11 COURTROOM ADMINISTRATOR: All rise.

12 THE COURT: Thank you. You may be seated.

13 Do you need some more time to listen to the  
14 recording and review it with the transcript?

15 MR. SANFT: Your Honor, the government's been  
16 very helpful and we've been able to look at that  
17 information. I do have a few questions for the --

18 THE RECORDER: Mr. Sanft --

19 MR. SANFT: I'm sorry.

20 THE RECORDER: Thank you.

21 MR. SANFT: I apologize, madam clerk.

22 We do have some further questions for the  
23 interpreter.

24 THE COURT: All right. Go ahead.

25

—TRANSCRIBED FROM DIGITAL RECORDING—

1                                   FURTHER RECROSS-EXAMINATION

2       BY MR. SANFT:

3           Q.       Sir, have you had an opportunity to listen as we  
4       were listening to the portion of the government's exhibit,  
5       I think it's Exhibit 26 --

6                   UNIDENTIFIED SPEAKER:   It's 25A.

7           MR. SANFT:   Okay.   This would be 25A.

8           THE WITNESS:   Yes, I heard you playing back a  
9       portion of it.

10       BY MR. SANFT:

11          Q.       All right.   And if you just follow with me down to  
12       line 08, which is the line that says, "No, you have to  
13       enter mine, enter larsschmidt22," that line is now  
14       highlighted by the government.   Thank you.

15          A.       Okay.

16          Q.       With regards to that, I'm going to ask if we could  
17       just replay the German translation -- or the German  
18       conversation that occurred up until that point.

19                   (Audiotape played.)

20           MR. SANFT:   Okay.   We can stop there.

21       BY MR. SANFT:

22          Q.       Now, your translation is that, "No, I have to enter  
23       mine."

24                   Could you be mistaken on that translation?

25          A.       Maybe.   Why?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Well, let me ask you this.

2 MR. SANFT: Your Honor, I do have what I believe  
3 is the correct German that was actually said on that  
4 particular thing.

5 THE COURT: Is there an alternative translation?

6 MR. SANFT: Yes, Your Honor.

7 THE COURT: Go ahead. You can ask.

8 MR. SANFT: I'm going to show this to the  
9 government, though. I'm sure that they're not going to  
10 understand it like this.

11 (Discussion held off the record.)

12 MR. SANFT: And, Your Honor, as the government's  
13 doing that, what I'd like to do at this particular point is  
14 mark this as Defense proposed Exhibit A.

15 Oh, actually do we have -- whatever is next in  
16 number.

17 COURTROOM ADMINISTRATOR: 5043.

18 MR. SANFT: 5043, Your Honor.

19 THE COURT: All right. Any objection to 5043?

20 Is it just being marked, or are you moving it  
21 for admission?

22 MR. SANFT: Well, at this point, I'm going to  
23 just mark it for identification purposes --

24 THE COURT: Okay.

25 MR. SANFT: -- since we're going to present it

TRANSCRIBED FROM DIGITAL RECORDING

1 to the interpreter.

2 THE COURT: All right.

3 MR. SANFT: And there's no objection from the  
4 government on this?

5 MS. ROOHANI: Not for marking, no, Your Honor.

6 MR. SANFT: May I approach?

7 THE COURT: Yes.

8 (Discussion held off the record.)

9 MR. SANFT: Your Honor, may I approach the  
10 witness?

11 THE COURT: Yes, you may.

12 BY MR. SANFT:

13 Q. Sir, I'm showing you what's been marked as Defense  
14 Exhibit 5043, not for purposes of admission, but can you  
15 read that particular line?

16 A. (Reads in German.)

17 Q. Is that correct?

18 A. Yeah. So he's saying, "No, that's not what I mean."

19 Q. Okay.

20 THE RECORDER: Mr. Sanft --

21 MR. SANFT: I'm sorry.

22 THE RECORDER: Thank you.

23 MR. SANFT: Thank you.

24 BY MR. SANFT:

25 Q. If you could just repeat that again so we could hear



—TRANSCRIBED FROM DIGITAL RECORDING—

1 the intonations and the way it sounds on the record,  
2 please.

3 A. (Speaks in German.)

4 Q. All right.

5 MR. SANFT: And if the government could replay  
6 the portion of the audio that we're asking for.

7 (Audiotape played.)

8 MR. SANFT: You can pause it.

9 BY MR. SANFT:

10 Q. Would it be fair to say that what you have just  
11 read, which is Defense Exhibit 5043, the words on that  
12 paper with regards to what we just heard on the audio would  
13 be relatively the same sound?

14 A. They're similar, yeah.

15 Q. Okay. And would it be fair so say that because of  
16 the fact that you're listening to a conversation between  
17 two individuals, that you could have been mistaken in terms  
18 of the translation of that particular phrase that was said  
19 between two individuals as we had heard earlier?

20 A. Yes.

21 MR. SANFT: I have no further questions, Your  
22 Honor.

23 THE COURT: Any redirect?

24 MS. ROOHANI: Sure.

25

TRANSCRIBED FROM DIGITAL RECORDING

1 FURTHER REDIRECT EXAMINATION

2 BY MS. ROOHANI:

3 Q. You said that they are similar when Mr. Sanft just  
4 asked you that question.

5 Do you remember that?

6 A. Yeah.

7 Q. Are they the same?

8 A. No.

9 Q. How are they not the same?

10 A. Well, *meinen*, the German word *meinin* is like in  
11 English "to mean." Also *mein*, same in English, is  
12 possessive, okay. And he's speaking very quickly, and it  
13 did sound like he was saying you have to give mine.

14 But hearing it again, I can now hear this.

15 Q. Okay.

16 MR. SANFT: And then, Your Honor, just for the  
17 record, what the witness has done is basically pointed to  
18 Defendant's Exhibit 5043 as the "this."

19 THE COURT: The record will -- yes, the record  
20 will reflect the witness was pointing to Defense 5043.

21 MS. ROOHANI: Okay. Can you go down to  
22 highlight 6, 7, and 8, Marissa.

23 BY MS. ROOHANI:

24 Q. On line 6, who is making the statement? What are  
25 the letters before that?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Frank.

2 Q. F-A? And I'll represent that that's Frank.

3 Can you read me what that says?

4 A. "So then I can enter my correct login name and  
5 e-mail and then it can" --

6 Q. And then JF, which is the defendant, says?

7 A. "No, you have to enter mine" --

8 Q. Or, alternatively, "No, that's not what I mean,"  
9 which is what the defense has provided you with; is that  
10 correct?

11 A. So this line came from line 8?

12 Q. Yes. I would assume. If you had to pick a  
13 translation --

14 A. Yeah, that's right. Yeah. So what he wrote here  
15 sounded correct when he played it back from this line here.

16 Q. If you had to pick which one was correct -- more  
17 correct, which one would you pick?

18 A. (Speaking in German), No, that is not what I mean.

19 Q. Okay. Finish reading the end of that sentence for  
20 me.

21 A. For JF?

22 Q. Yes.

23 A. So, "No, that is not what I mean. Enter  
24 larsschmidt22."

25 Q. Okay. And Frank Alfter previously said, "Enter my

—TRANSCRIBED FROM DIGITAL RECORDING—

1 correct login name and e-mail?" And the defendant  
2 responds, "No, that's not what I mean," and then tells him  
3 what to enter; is that correct?

4 A. Correct.

5 Q. Okay. I also need you to take a look at -- hold on  
6 for just one minute.

7 Marissa, can you go further down in that call,  
8 please. Okay. Specifically highlight lines 1 and 2.

9 Can you read me those two lines?

10 MR. SANFT: Your Honor, I'm going to object to  
11 this. Unless the question is, is it to the accuracy of the  
12 translation of the German language in the English language,  
13 I'm not quite sure what the purpose of the line of  
14 questioning would be by the government.

15 MS. ROOHANI: Your Honor, that's fine. I'll  
16 withdraw the question.

17 I have no more questions for this witness.

18 THE COURT: All right. Do you have any other  
19 cross, Mr. Sanft?

20 MR. SANFT: I just have one other cross, and  
21 that is this.

22 FURTHER RECROSS-EXAMINATION

23 BY MR. SANFT:

24 Q. The time that we spent together, would it be fair to  
25 say, of course, that translation is not like a scientific

—TRANSCRIBED FROM DIGITAL RECORDING—

1 method, where something could be proven over and over and  
2 over again, it's subject to interpretation? Right?

3 A. I can't say yes to that.

4 Q. Okay. But can you also say no to that?

5 A. Depends on the context.

6 Q. Right. So, for instance, if two people are having  
7 a -- because of history and so forth, you can't make a  
8 determination as to the accuracy of the translations, you  
9 can up to a certain point, but there's still limitations to  
10 the translations that you gave in this case; right?

11 A. Could you please rephrase that question?

12 Q. It was a bad question.

13 What I'm asking for specifically is, at least  
14 what we've demonstrated here in court today, is that  
15 interpretation isn't an exact science?

16 A. Well, this is -- what we're talking about here is  
17 translation.

18 Q. Right. So what I'm saying is that with regards to  
19 translation as a whole, it's not an exact science; right?

20 A. It can be an exact science, but it's not like math.

21 Q. Sure. Which means that the same equation over and  
22 over again means the same thing; right?

23 A. You can have a word that has many different  
24 meanings. You can have a phrase that has many different  
25 meanings.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Right. And so the issue with -- and the challenge,  
2 I'm assuming that you do in your job, is that making a  
3 determination as to what the right meaning is to a specific  
4 phrase or to a conversation that's occurring between two  
5 people, that's the challenge in your job; right?

6 A. That's the challenge, yes.

7 Q. Okay. And, once again, would it be fair to say that  
8 based upon at least the items that we looked at today, is  
9 that you've testified one way and now you've agreed that it  
10 potentially could be another way, and that could be  
11 throughout the entire documents that you've provided here  
12 to the Court?

13 A. No. You highlighted a sentence and gave a different  
14 translation after listening to it. I agree that this  
15 particular line or that part of the line was mistranslated  
16 and this was the correct translation.

17 Q. Okay.

18 MR. SANFT: No further questions, Your Honor.

19 THE COURT: All right. And, for the record,  
20 when he said this was a mistranslation, he was pointing to  
21 the screen; when he's pointing to what was a correct  
22 translation, he's pointing to Defense Exhibit 5043.

23 MR. SANFT: Thank you, Your Honor.

24 THE COURT: So did you want to move to admit  
25 5043?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MR. SANFT: Your Honor, at this point, based  
2 upon our discussion I think that would be prudent.

3 We'll move for admission.

4 THE COURT: Any objection from the government?

5 MS. ROOHANI: No objection, Your Honor.

6 THE COURT: All right.

7 MS. ROOHANI: And if I could just ask one more  
8 question of Mr. Schapery?

9 THE COURT: Sure. So Defense Exhibit 5043 will  
10 be admitted.

11 (Defendant's Exhibit 5043 received.)

12 MS. ROOHANI: And, Your Honor, may I ask one  
13 more question?

14 THE COURT: Yes, you may.

15 FURTHER REDIRECT EXAMINATION

16 BY MS. ROOHANI:

17 Q. With the exception of that one sentence, do you  
18 stand by all of the other translations that you have done  
19 and presented today in court?

20 A. Yes, I do.

21 MS. ROOHANI: Thank you.

22 THE COURT: Any other cross, Mr. Sanft?

23 MR. SANFT: No, Your Honor.

24 THE COURT: All right. So can we release him  
25 now, or do you think you want --

—TRANSCRIBED FROM DIGITAL RECORDING—

1 MS. ROOHANI: We're not intending to recall him  
2 at this time, so we would be -- we would ask for him to be  
3 released. He doesn't live in Las Vegas. And I imagine  
4 that he might want to travel home to his family.

5 THE COURT: All right. Well, thank you,  
6 Mr. Schapery, for coming in today. We'll go ahead and  
7 release you from your subpoena.

8 Again, just be careful, but only -- yeah, leave  
9 that because that's now an exhibit. And you take your  
10 water bottle. And be careful on the way down with those  
11 steps.

12 (The witness was excused.)

13 THE COURT: All right. Does the government like  
14 to call its next witness?

15 MS. ROOHANI: Your Honor, we have anticipated  
16 one more witness, or potentially more than one. The one  
17 that we have anticipated, Special Agent Mari Panovich, we  
18 anticipate that she is going to be on the stand  
19 significantly longer than whatever time we have left for  
20 today.

21 We would ask, if it's okay with you, if we could  
22 start again tomorrow with Special Agent Panovich and then  
23 any potential additional witnesses that the government  
24 might intend to call.

25 THE COURT: All right. So you're saying you



—TRANSCRIBED FROM DIGITAL RECORDING—

1 don't have any other witnesses today?

2 MS. ROOHANI: Right. That's correct.

3 MR. MARCHESE: And we have no problem with that,  
4 Your Honor. I think we're -- both parties are on schedule.  
5 We should be able to wrap up this week.

6 I -- as a side note, I have to be in state court  
7 in Judge Ellsworth's chambers at 4:30 p.m. I'm not in  
8 trouble, don't worry. So that would work well for me as  
9 well.

10 THE COURT: All right. So tomorrow we'll plan  
11 to be here from 1:00 to 5:00 p.m.; is that right?

12 Could we possibly do noon tomorrow, from noon to  
13 5:00?

14 MS. ROOHANI: Noon will be fine for the  
15 government, Your Honor.

16 THE COURT: Does that work for the defense?

17 MR. MARCHESE: Yes, Your Honor.

18 THE COURT: All right. So we'll do 12:00 noon  
19 to 5:00 tomorrow, Wednesday, and then we still have plans  
20 for Thursday 1:00 to 5:00. And Friday, potentially, 1:00  
21 to 3:30. Is that what we were thinking?

22 So we might get cut short on Friday afternoon is  
23 the reason why I'm trying to find little pockets of extra  
24 time wherever I can this week.

25 All right. So let's plan to be back here at

TRANSCRIBED FROM DIGITAL RECORDING

1 noon tomorrow.

2 MS. ROOHANI: Your Honor, just for planning  
3 purposes, the government does plan to end its close in  
4 chief -- case in chief tomorrow.

5 THE COURT: All right. Thank you.

6 All right. So we'll be in recess.

7 COURTROOM ADMINISTRATOR: All rise.

8 THE COURT: Off record.

9 (The proceedings adjourned at 3:44 p.m.)

10 \* \* \*

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TRANSCRIBED FROM DIGITAL RECORDING

1	I N D E X	
2	GOVERNMENT'S WITNESSES:	PAGE
3	KELLIE BADALUCCO	
	Direct Examination By Ms. Roohani	230
4	Cross-Examination By Mr. Marchese	271
	Voir Dire Examination By Ms. Roohani	280
5	Cross-examination (Resumed)	283
	Redirect Examination By Ms. Roohani	303
6	Recross-Examination By Mr. Marchese	316
7	GARY MCCAMEY	
	Direct Examination By Ms. Roohani	322
8	Cross-Examination By Mr. Durham	338
	Redirect Examination By Ms. Roohani	357
9	Recross-Examination By Mr. Durham	362
	Further Redirect Examination	367
10	By Ms. Roohani	
11	JOSHUA RODRIGUEZ	
	Direct Examination By	369
12	Ms. Cartier-Giroux	
13	MARI PANOVICH	
	Direct Examination By	375
14	Ms. Cartier-Giroux	
15	PHILIP SCHAPERY	
	Direct Examination By Ms. Roohani	385
16	Cross-Examination By Mr. Sanft	418
	Redirect Examination By Ms. Roohani	427
17	Recross-Examination By Mr. Sanft	431
	Further Redirect Examination	434
18	By Ms. Roohani	
	Recross-Examination By Mr. Sanft	435
19	Further Recross-Examination	439
	By Mr. Sanft	
20	Further Redirect Examination	443
	By Ms. Roohani	
21	Further Recross-Examination	445
	By Mr. Sanft	
22	Further Redirect Examination	448
	By Ms. Roohani	

1	<b>E X H I B I T S</b>	
2	<b>GOVERNMENT 'S</b>	<b>ADMITTED</b>
	20A	232
3	20B	233
	21A and 21B	243
4	22A and 22B	244
	23A, 23B, 23C, 23D, 23E, 23F	261
5	24	269
	25A, 26A, 27A	381
6	28A	383
	28B	416
7	46A, 46B, 46C	411
8	<b>DEFENDANT 'S</b>	<b>ADMITTED</b>
	5035	293
9	5040	284
	5042	317
10	5043	448
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

-o0o-

I certify that the foregoing is a correct  
transcript from the electronic sound recording  
of the proceedings in the above-entitled matter.



6/18/17

Donna Davidson

Date